

Funding Guidelines

FY 2009 Water Quality Financial Assistance Guidelines Volume Two

Centennial Clean Water Program

*Clean Water Act Section 319
Nonpoint Source Fund*

*Washington State Water Pollution
Control Revolving Fund*

August 2007

Publication Number 07-10-070



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Note: The *Fiscal Year 2009 Water Quality Financial Assistance Guidelines* document is divided into two volumes.

Volume One contains the main body of the guidelines.
Volume Two contains referenced statutes and regulations.

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Chapter 70.146 RCW, Water Pollution Control Facilities Financing

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RCW 70.146.010 - Purpose -- Legislative intent.

The long-range health and environmental goals for the state of Washington require the protection of the state's surface and underground waters for the health, safety, use, enjoyment, and economic benefit of its people. It is the purpose of this chapter to provide financial assistance to the state and to local governments for the planning, design, acquisition, construction, and improvement of water pollution control facilities and related activities in the achievement of state and federal water pollution control requirements for the protection of the state's waters.

It is the intent of the legislature that distribution of moneys for water pollution control facilities under this chapter be made on an equitable basis taking into consideration legal mandates, local effort, ratepayer impacts, and past distributions of state and federal moneys for water pollution control facilities.

It is the intent of this chapter that the cost of any water pollution control facility attributable to increased or additional capacity that exceeds one hundred ten percent of existing needs at the time of application for assistance under this chapter shall be entirely a local or private responsibility. It is the intent of this chapter that industrial pretreatment be paid by industries and that the water quality account shall not be used for such purposes.

[1986 c 3 § 1.]

NOTES:

Effective dates -- 1986 c 3: See note following RCW 82.24.027.

RCW 70.146.020 - Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Account" means the water quality account in the state treasury.

(2) "Department" means the Department of Ecology.

(3) "Eligible cost" means the cost of that portion of a water pollution control facility that can be financed under this chapter excluding any portion of a facility's cost attributable to capacity that is in excess of that reasonably required to address one hundred ten percent of the applicant's needs for water pollution control existing at the time application is submitted for assistance under this chapter.

(4) "Water pollution control facility" or "facilities" means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including but not limited to sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include such facilities, equipment, and collection systems as are necessary to protect federally designated sole source aquifers.

(5) "Water pollution control activities" means actions taken by a public body for the following purposes: (a) To prevent or mitigate pollution of underground water; (b) to control nonpoint sources of water pollution; (c) to restore the water quality of fresh water lakes; and (d) to maintain or improve water quality through the use of water pollution control facilities or other means. During the 1995-1997 fiscal biennium, "water pollution control activities" includes activities by state agencies to protect public drinking water supplies and sources.

(6) "Public body" means the state of Washington or any agency, county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, and those Indian tribes now or hereafter recognized as such by the federal government.

(7) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(8) "Nonpoint source water pollution" means pollution that enters any waters of the state from any dispersed water-based or land-use activities, including, but not limited to, atmospheric deposition, surface water runoff from agricultural lands, urban areas, and forest lands, subsurface or underground sources, and discharges from boats or other marine vessels.

(9) "Sole source aquifer" means the sole or principal source of public drinking water for an area designated by the administrator of the environmental protection agency pursuant to Public Law 93-523, Sec. 1424(b).

[1995 2nd sp.s. c 18 § 920; 1993 sp.s. c 24 § 923; 1987 c 436 § 5; 1986 c 3 § 2.]

NOTES:

Severability -- Effective date -- 1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Severability -- Effective dates -- 1993 sp.s. c 24: See notes following RCW 28A.165.070.

Effective dates -- 1986 c 3: See note following RCW 82.24.027.

RCW 70.146.030 - Water quality account -- Progress report.

(1) The water quality account is hereby created in the state treasury. Moneys in the account may be used only in a manner consistent with this chapter. Moneys deposited in the account shall be administered by the department of ecology and shall be subject to legislative appropriation. Moneys placed in the account shall include tax receipts as provided in RCW 82.24.027, 82.26.025, and 82.32.390, principal and interest from the repayment of any loans granted pursuant to this chapter, and any other moneys appropriated to the account by the legislature.

(2) The department may use or permit the use of any moneys in the account to make grants or loans to public bodies, including grants to public bodies as cost-sharing moneys in any case where federal, local, or other funds are made available on a cost-sharing basis, for water pollution control facilities and activities, or for purposes of assisting a public body to obtain an ownership interest in water pollution control facilities and/or to defray a part of the payments made by a public body to a service provider under a service agreement entered into pursuant to RCW 70.150.060, within the purposes of this chapter and for related administrative expenses. For the period July 1, 2001, to June 30, 2003, moneys in the account may be used to process applications received by the department that seek to make changes to or transfer existing water rights and for grants and technical assistance to public bodies for watershed planning under chapter 90.82 RCW. No more than three percent of the moneys deposited in the account may be used by the department to pay for the administration of the grant and loan program authorized by this chapter.

(3) Beginning with the biennium ending June 30, 1997, the department shall present a biennial progress report on the use of moneys from the account to the chairs of the senate committee on ways and means and the house of representatives committee on appropriations. The first report is due June 30, 1996, and the report for each succeeding biennium is due December 31 of the odd-numbered year. The report shall consist of a list of each recipient, project description, and amount of the grant, loan, or both.

[2002 c 371 § 921; 2001 2nd sp.s. c 7 § 922; 1996 c 37 § 2; 1995 2nd sp.s. c 18 § 921; 1991 sp.s. c 13 § 61. Prior: 1987 c 505 § 64; 1987 c 436 § 6; 1986 c 3 § 3.]

NOTES:

Severability -- Effective date -- 2002 c 371: See notes following RCW 9.46.100.

Severability -- Effective date -- 2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Severability -- Effective date -- 1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Effective dates -- Severability -- 1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective dates -- 1986 c 3: See note following RCW 82.24.027.

RCW 70.146.040

Level of grant or loan not precedent.

No grant or loan made in this chapter for fiscal year 1987 shall be construed to establish a precedent for levels of grants or loans made from the water quality account thereafter.

[1986 c 3 § 6.]

NOTES:

Effective dates -- 1986 c 3: See note following RCW 82.24.027.

RCW 70.146.050 - Compliance schedule for secondary treatment.

The department of ecology may provide for a phased in compliance schedule for secondary treatment which addresses local factors that may impede compliance with secondary treatment requirements of the federal clean water act.

In determining the length of time to be granted for compliance, the department shall consider the criteria specified in the federal clean water act.

[1986 c 3 § 8.]

NOTES:

Effective dates -- 1986 c 3: See note following RCW 82.24.027.

RCW 70.146.060 - Water quality account distributions -- Limitations.

During the period from July 1, 1987, until June 30, 1995, the following limitations shall apply to the department's total distribution of funds appropriated from the water quality account:

(1) Not more than fifty percent for water pollution control facilities which discharge directly into marine waters;

(2) Not more than twenty percent for water pollution control activities that prevent or mitigate pollution of underground waters and facilities that protect federally designated sole source aquifers with at least two-thirds for the Spokane-Rathdrum Prairie Aquifer;

(3) Not more than ten percent for water pollution control activities that protect freshwater lakes and rivers including but not limited to Lake Chelan and the Yakima and Columbia rivers;

(4) Not more than ten percent for activities which control nonpoint source water pollution;

(5) Ten percent and such sums as may be remaining from the categories specified in subsections (1) through (4) of this section for water pollution control activities or facilities as determined by the department; and

(6) Two and one-half percent of the total amounts of moneys under subsections (1) through (5) of this section from February 21, 1986, until December 31, 1995, shall be appropriated biennially to the state conservation commission for the purposes of this chapter. Not less than ten percent of the moneys received by the state conservation commission under the provisions of this section shall be expended on research activities.

The distribution under this section shall not be required to be met in any single fiscal year.

Funds provided for facilities and activities under this chapter may be used for payments to a service provider under a service agreement pursuant to RCW 70.150.060. If funds are to be used for such payments, the department may make periodic disbursements to a public body or may make a single lump sum disbursement. Disbursements of funds with respect to a facility owned or operated by a service provider shall be equivalent in value to disbursements that would otherwise be made if that facility were owned or operated by a public body. Payments under this chapter for waste disposal and

management facilities made to public bodies entering into service agreements pursuant to RCW 70.150.060 shall not exceed amounts paid to public bodies not entering into service agreements.

[1987 c 527 § 1; 1987 c 436 § 7; 1986 c 3 § 9.]

NOTES:

Reviser's note: This section was amended by 1987 c 436 § 7 and by 1987 c 527 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates -- 1986 c 3: See note following RCW 82.24.027.

RCW 70.146.070 - Grants or loans for water pollution control facilities -- Considerations.

(1) When making grants or loans for water pollution control facilities, the department shall consider the following:

- (a) The protection of water quality and public health;
- (b) The cost to residential ratepayers if they had to finance water pollution control facilities without state assistance;
- (c) Actions required under federal and state permits and compliance orders;
- (d) The level of local fiscal effort by residential ratepayers since 1972 in financing water pollution control facilities;
- (e) The extent to which the applicant county or city, or if the applicant is another public body, the extent to which the county or city in which the applicant public body is located, has established programs to mitigate nonpoint pollution of the surface or subterranean water sought to be protected by the water pollution control facility named in the application for state assistance; and
- (f) The recommendations of the Puget Sound action team and any other board, council, commission, or group established by the legislature or a state agency to study water pollution control issues in the state.

(2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 may not receive a grant or loan for water pollution control facilities unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting or receiving a grant or loan under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 which has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 is not prohibited from receiving a grant or loan under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before submitting a request for a grant or loan.

(3) Whenever the department is considering awarding grants or loans for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under

RCW 36.70A.040, it shall consider whether the county, city, or town planning under RCW 36.70A.040 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

[1999 c 164 § 603; 1997 c 429 § 30; 1991 sp.s. c 32 § 24; 1986 c 3 § 10.]

NOTES:

Findings -- Intent -- Part headings and subheadings not law -- Effective date -- Severability -- 1999 c 164: See notes following RCW 43.160.010.

Savings -- 1999 c 164 §§ 301-303, 305, 306, and 601-603: See note following RCW 82.60.020.

Effective date -- 1997 c 429 §§ 29 and 30: See note following RCW 43.155.070.

Severability -- 1997 c 429: See note following RCW 36.70A.3201.

Section headings not law -- 1991 sp.s. c 32: See RCW 36.70A.902.

Effective dates -- 1986 c 3: See note following RCW 82.24.027.

RCW 70.146.075 - Extended grant payments.

(1) The department of ecology may enter into contracts with local jurisdictions which provide for extended grant payments under which eligible costs may be paid on an advanced or deferred basis.

(2) Extended grant payments shall be in equal annual payments, the total of which does not exceed, on a net present value basis, fifty percent of the total eligible cost of the project incurred at the time of design and construction. The duration of such extended grant payments shall be for a period not to exceed twenty years. The total of federal and state grant moneys received for the eligible costs of the project shall not exceed fifty percent of the eligible costs.

(3) Any moneys appropriated by the legislature from the water quality account shall be first used by the department of ecology to satisfy the conditions of the extended grant payment contracts.

[1987 c 516 § 1.]

RCW 70.146.080 - Determination of tax receipts in water quality account -- Transfer of sufficient moneys from general revenues.

Within thirty days after June 30, 1987, and within thirty days after each succeeding fiscal year thereafter, the state treasurer shall determine the tax receipts deposited into the water quality account for the preceding fiscal year. If the tax receipts deposited into the account in each of the fiscal years 1988 and 1989 are less than forty million dollars, the state treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total receipts in each fiscal year up to forty million dollars.

For the biennium ending June 30, 1991, if the tax receipts deposited into the water quality account and the earnings on investment of balances credited to the account are less than ninety million dollars, the treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total revenue up to ninety million dollars. The determination and transfer shall be made by July 31, 1991.

For fiscal year 1992 and for fiscal years 1995 and 1996 and thereafter, if the tax receipts deposited into the water quality account for each fiscal year are less than forty-five million dollars, the treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total revenue up to forty-five million dollars. Determinations and transfers shall be made by July 31 for the preceding fiscal year.

[1994 sp.s. c 6 § 902; 1993 sp.s. c 24 § 924; 1991 sp.s. c 16 § 923; 1986 c 3 § 11.]

NOTES:

Severability -- Effective date -- 1994 sp.s. c 6: See notes following RCW 28A.310.020.

Severability -- Effective dates -- 1993 sp.s. c 24: See notes following RCW 28A.165.070.

Severability -- Effective date -- 1991 sp.s. c 16: See notes following RCW 9.46.100.

Effective dates -- 1986 c 3: See note following RCW 82.24.027.

RCW 70.146.090 - Grants and loans to local governments -- Statement of environmental benefits -- Development of outcome-focused performance measures.

In providing grants and loans to local governments, the department shall require recipients to incorporate the environmental benefits of the project into their applications, and the department shall utilize the statement of environmental benefits in its grant and loan prioritization and selection process. The department shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grant and loan program. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The department shall consult with affected interest groups in implementing this section.

[2001 c 227 § 6.]

NOTES:

Findings -- Intent -- 2001 c 227: See note following RCW 43.41.270.

RCW 70.146.900

Severability -- 1986 c 3.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1986 c 3 § 16.]

Chapter 90.50A RCW, Water Pollution Control Facilities – Federal Capitalization Grants

RCW 90.50A.005 Purpose. The long-range health and environmental goals for the state of Washington require the protection of the state's surface and underground waters for the health, safety, use, enjoyment, and economic benefit of its people. It is the purpose of this chapter to provide an account to receive federal capitalization grants to provide financial assistance to the state and to local governments for the planning, design, acquisition, construction, and improvement of water pollution control facilities and related activities in the achievement of state and federal water pollution control requirements for the protection of the state's waters. [1988 c 284 § 1.]

RCW 90.50A.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Eligible cost" means the cost of that portion of a water pollution control facility or activity that can be financed under this chapter.

(3) "Fund" means the water pollution control revolving fund in the custody of the state treasurer.

(4) "Water pollution control facility" or "water pollution control facilities" means any facilities or systems owned or operated by a public body for the control, collection, storage, treatment, disposal, or recycling of wastewater, including but not limited to sanitary sewage, storm water, combined sewer overflows, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include such facilities, equipment, and collection systems as are necessary to protect federally designated sole source aquifers.

(5) "Water pollution control activities" means actions taken by a public body for the following purposes: (a) To control nonpoint sources of water pollution; (b) to develop and implement a comprehensive management plan for estuaries; and (c) to maintain or improve water quality through the use of water pollution control facilities or other means.

(6) "Public body" means the state of Washington or any agency, county, city or town, other political subdivision, municipal corporation or quasi-municipal corporation, and those Indian tribes now or hereafter recognized as such by the federal government.

(7) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(8) "Nonpoint source water pollution" means pollution that enters any waters of the state from any dispersed water-based or land-use activities, including, but not limited to, atmospheric deposition, surface water runoff from agricultural lands, urban areas, and forest lands, subsurface or underground sources, and discharges from boats or other marine vessels.

(9) "Federal capitalization grants" means grants from the federal government provided by the water quality act of 1987 (P.L. 100-4). [1988 c 284 § 2.]

RCW 90.50A.020 Water pollution control revolving fund. (1) The water pollution control revolving fund is hereby established in the state treasury. Moneys in this fund may be spent only after legislative appropriation. Moneys in the fund may be spent only in a manner consistent with this chapter.

(2) The water pollution control revolving fund shall consist of:

- (a) All capitalization grants provided by the federal government under the federal water quality act of 1987;
 - (b) All state matching funds appropriated or authorized by the legislature;
 - (c) Any other revenues derived from gifts or bequests pledged to the state for the purpose of providing financial assistance for water pollution control projects;
 - (d) All repayments of moneys borrowed from the fund;
 - (e) All interest payments made by borrowers from the fund;
 - (f) Any other fee or charge levied in conjunction with administration of the fund; and
 - (g) Any new funds as a result of leveraging.
- (3) The state treasurer may invest and reinvest moneys in the water pollution control revolving fund in the manner provided by law. All earnings from such investment and reinvestment shall be credited to the water pollution control revolving fund. [1993 c 329 § 1; 1992 c 235 § 9; 1991 sp.s. c 13 § 102; 1988 c 284 § 3.]

RCW 90.50A.030 Use of moneys in fund. The department of ecology shall use the moneys in the water pollution control revolving fund to provide financial assistance as provided in the water quality act of 1987:

- (1) To make loans, on the condition that:
 - (a) Such loans are made at or below market interest rates, including interest free loans, at terms not to exceed twenty years;
 - (b) Annual principal and interest payments will commence not later than one year after completion of any project and all loans will be fully amortized not later than twenty years after project completion;
 - (c) The recipient of a loan will establish a dedicated source of revenue for repayment of loans; and
 - (d) The fund will be credited with all payments of principal and interest on all loans.
- (2) Loans may be made for the following purposes:
 - (a) To public bodies for the construction or replacement of water pollution control facilities as defined in section 212 of the federal water quality act of 1987;
 - (b) For the implementation of a management program established under section 319 of the federal water quality act of 1987 relating to the management of nonpoint sources of pollution, subject to the requirements of that act; and
 - (c) For development and implementation of a conservation and management plan under section 320 of the federal water quality act of 1987 relating to the national estuary program, subject to the requirements of that act.
- (3) The department may also use the moneys in the fund for the following purposes:
 - (a) To buy or refinance the water pollution control facilities' debt obligations of public bodies at or below market rates, if such debt was incurred after March 7, 1985;
 - (b) To guarantee, or purchase insurance for, public body obligations for water pollution control facility construction or replacement or activities if the guarantee or insurance would improve credit market access or reduce interest rates, or to provide loans to a public body for this purpose;
 - (c) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of the sale of such bonds will be deposited in the fund;
 - (d) To earn interest on fund accounts; and
 - (e) To pay the expenses of the department in administering the water pollution control revolving fund according to administrative reserves authorized by federal and state law.
- (4) Beginning with the biennium ending June 30, 1997, the department shall present a biennial progress report on the use of moneys from the account to the chairs of the senate committee on ways and means and the House of Representatives committee on appropriations. The first report is due June 30, 1996, and the report for each succeeding biennium is due December 31 of the odd-numbered year. The report shall consist of a list of each recipient, project description, and amount of the grant, loan, or both.
- (5) The department may not use the moneys in the water pollution control revolving fund for grants. [1996 c 37 § 4; 1988 c 284 § 4.]

* Chapter 90.50A RCW, Water Pollution Control Facilities - Federal Capitalization Grants

RCW 90.50A.040 Administration of fund. Moneys deposited in the water pollution control revolving fund shall be administered by the department of ecology. In administering the fund, the department shall:

- (1) Allocate funds for loans in accordance with the annual project priority list in accordance with section 212 of the federal water pollution control act as amended in 1987, and allocate funds under sections 319 and 320 according to the provisions of that act;
- (2) Use accounting, audit, and fiscal procedures that conform to generally accepted government accounting standards;
- (3) Prepare any reports required by the federal government as a condition to awarding federal capitalization grants;
- (4) Adopt by rule any procedures or standards necessary to carry out the provisions of this chapter;
- (5) Enter into agreements with the federal environmental protection agency;
- (6) Cooperate with local, substate regional, and interstate entities regarding state assessment reports and state management programs related to the nonpoint source management programs as noted in section 319(c) of the federal water pollution control act amendments of 1987 and estuary programs developed under section 320 of that act; and
- (7) Comply with provisions of the water quality act of 1987. [1988 c 284 § 5.]

RCW 90.50A.050 Loans from fund -- Requirements for recipients. Any public body receiving a loan from the fund shall:

- (1) Appear on the annual project priority list to be identified for funding under section 212 of the federal water pollution control act amendments of 1987 or be eligible under sections 319 and 320 of that act;
- (2) Submit an application to the department;
- (3) Establish and maintain a dedicated source of revenue or other acceptable source of revenue for the repayment of the loan; and
- (4) Demonstrate to the satisfaction of the department that it has sufficient legal authority to incur the debt for which it is applying. [1988 c 284 § 6.]

RCW 90.50A.060 Defaults. If a public body defaults on payments due to the fund, the state may withhold any amounts otherwise due to the public body and direct that such funds be applied to the indebtedness and deposited into the account. [1988 c 284 § 7.]

RCW 90.50A.070 Establishment of policies for loan terms and interest rates. The department shall establish by rule policies for establishing loan terms and interest rates for loans made from the fund that assure that the objectives of this chapter are met and that adequate funds are maintained in the fund to meet future needs. [1988 c 284 § 8.]

RCW 90.50A.900 Severability -- 1988 c 284. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 284 § 14.]

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- WAC 173-95A-810 Appealing a department decision
- WAC 173-95A-820 Audit requirements for grant and loan recipients

WAC 173-95A-010 Purpose. (1) The purpose of this chapter is to set forth requirements for the department of ecology's administration of the centennial clean water program, as authorized by chapter 70.146 RCW, Water pollution control facilities financing. This fund provides financial assistance to public bodies for statewide, high-priority water quality projects in the form of grants and loans through appropriation by the Washington state legislature.

(2) The centennial program may be used for the following purposes:

(a) To make grants and loans to finance the planning, design, and/or construction of water pollution control facilities; and

(b) To make grants and loans for nonpoint source pollution control management programs, including planning and implementing elements of the most current version of the "*Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution*," (ecology publication #05-10-027).

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-010, filed 6/29/07, effective 7/30/07. Statutory Authority: Chapter 70.146 RCW. 01-01-042 (Order 00-10), § 173-95A-010, filed 12/8/00, effective 1/8/01. Statutory Authority: RCW 70.146.070 and 36.70A.040. 97-24-096 (Order 97-31), § 173-95A-010, filed 12/3/97, effective 1/3/98.]

WAC 173-95A-015 Integrated funding approach. (1) Where possible, the Washington state department of ecology combines the management of the centennial program with other funding programs, such as the Washington state water pollution control revolving fund, and the Clean Water Act section 319 nonpoint source fund.

(2) The integrated funding process includes a combined funding cycle, program guidelines, funding offer and applicant list, and statewide funding workshops.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-015, filed 6/29/07, effective 7/30/07.]

WAC 173-95A-020 Definitions. For the purposes of this chapter:

(1) **Activities** see water pollution control activities.

(2) **Applicant** means a public body that has applied for funding.

(3) **Best management practices** (BMP) means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.

(4) **Cash match** means moneys used to match the state share of a grant.

(5) **Ceiling amount** means the highest level of financial assistance the department can provide to a recipient for an individual project.

(6) **Centennial** means the centennial clean water program.

(7) **Commercial, industrial, and institutional flows** mean the portion of the total flows to a facility that originate from commercial establishments, industrial facilities, or institutional sources such as schools, hospitals, and prisons.

(8) **Competitive funding** means moneys available for projects through a statewide evaluation process.

(9) **Completion date** or **expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.

(10) **Concentrated animal feeding operation** (CAFO) means:

(a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five-year, twenty-four-hour storm event; or

(b) An operation that is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit; or

(c) An operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or

(d) An operation designated by the Environmental Protection Agency as polluting the waters of Washington state.

(11) **Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.

(12) **Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.

(13) **Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

(14) **Cost-effective alternative** means the option selected in an approved facilities plan that meets the requirements of the project, recognizes environmental and other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., lowest present worth or equivalent annual value).

(15) **Department** means the Washington state department of ecology.

(16) **Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

(17) **Director** means the director of the Washington state department of ecology or his or her authorized designee.

(18) **Draft offer and applicant list** means a catalog of all projects considered and proposed for funding based on an evaluation and the appropriations in the Washington state capital budget.

(19) **Easement** means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to inspect, maintain, or repair loan-or-grant-funded activities or facilities.

(20) **Effective date** means the date the loan or grant agreement

is signed by the department's water quality program manager.

(21) **Eligible cost** means the portion of the facilities or activities project that can be funded.

(22) **Enforcement order** means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

(23) **Engineering report** means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

(24) **Environmental degradation** means the reduced capacity of the environment to meet social and ecological objectives and needs.

(25) **Environmental emergency** means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

(26) **Estimated construction cost** means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

(27) **Existing need** means water pollution control facility's capacity reserved for all users, at the time of application, in order to meet the requirements of the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

(28) **Existing residential need** means water pollution control facility's capacity reserved for the residential population, at the time of application, in order to meet the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

(29) **Extended grant payments** means cash disbursements for eligible project costs made with equal annual payments as established in RCW 70.146.075.

(30) **Facilities** see water pollution control facility.

(31) **Facilities plan** means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

(32) **Final offer and applicant list** means a catalog of all projects considered and proposed for funding and those offered funding.

(33) **Force account** means loan or grant project work performed using labor, materials, or equipment of a public body.

(34) **Funding cycle** means the events related to the competitive process used to allocate moneys from the clean water state revolving fund, centennial clean water program, and the Clean Water Act section 319 nonpoint source fund for a state fiscal year.

(35) **Grant agreement** means a contractual arrangement between a

public body and the department.

(36) **Indirect cost** means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

(37) **In-kind contributions** means the value of noncash contributions provided for a project.

(38) **Interlocal agreement** means a written arrangement between a grant recipient and another public body to provide eligible grant match contributions to a project. Interlocal agreements are subject to chapter 39.34 RCW, Interlocal Cooperation Act.

(39) **Interlocal costs** means the value of goods or services provided to a project by a public body under the terms of an interlocal agreement. Interlocal contributions satisfy cash matching requirements.

(40) **Infiltration and inflow** means water, other than wastewater, that enters a sewer system.

(41) **Infiltration and inflow correction** means the cost-effective alternative or alternatives identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow to an existing sewer system.

(42) **Landowner agreement** means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

(43) **Loan agreement** means a contractual arrangement between a public body and the department that involves a disbursement of moneys that must be repaid.

(44) **Loan default** means failure to make a loan repayment to the department within sixty days after the payment was due.

(45) **Match** means the recipient share of eligible project costs.

(46) **Nonpoint source water pollution** means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from boats or other marine vessels.

(47) **Plans and specifications** means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

(48) **Preliminary project priority list** means a catalog of all projects considered for funding based on the governor's budget and submitted to the Washington state legislature for its consideration during budget development.

(49) **Project** means a water quality improvement effort funded with a grant or loan.

(50) **Project completion** or **expiration** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

(51) **Public body** means a state of Washington county, city or town, conservation district, other political subdivision, municipal

corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.

(52) **Public health emergency** means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

(53) **Recipient** means a public body that has an effective loan or grant agreement with the department.

(54) **Riparian buffer** or **zone** means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

(55) **Scope of work** means a detailed description of project tasks, milestones, and measurable objectives.

(56) **Service area population** means the number of people served in the area of the project.

(57) **Severe public health hazard** means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

(58) **Sewer** means the pipe and related pump stations located on public property or on public rights of way and easements that convey wastewater from buildings.

(59) **Side sewer** means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

(60) **State environmental review process** (SERP) means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

(61) **Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

(62) **Total project cost** means the sum of all expenses associated with a water quality project.

(63) **Water pollution** means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders such waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(64) **Water pollution control activities** or **activities** means actions taken by a public body for the following purposes:

- (a) To prevent or mitigate pollution of underground water;
- (b) To control nonpoint sources of water pollution;
- (c) To restore the water quality of freshwater lakes; and
- (d) To maintain or improve water quality through the use of

water pollution control facilities or other means.

(65) **Water pollution control facility** or **facilities** means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

(66) **Water resource inventory area** (WRIA) means one of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-020, filed 6/29/07, effective 7/30/07. Statutory Authority: Chapter 70.146 RCW. 01-01-042 (Order 00-10), § 173-95A-020, filed 12/8/00, effective 1/8/01. Statutory Authority: RCW 70.146.070 and 36.70A.040. 97-24-096 (Order 97-31), § 173-95A-020, filed 12/3/97, effective 1/3/98.]

PART 1 ELIGIBLE PROJECT TYPES

WAC 173-95A-100 Grant and loan eligible. Certain projects or project elements, including but not limited to the following may be eligible for centennial loan or grant assistance:

(1) **Aquatic plant control** when the water quality degradation is due to the presence of aquatic plants, and the source(s) of pollution can be addressed sufficiently to ensure that the pollution is eliminated;

(2) **BMP implementation** on private property:

(a) Best management practices that consist of new, innovative or alternative technology not yet demonstrated in the department's region in which it is proposed;

(b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a conservation easement or landowner agreement is granted by the landowner; and

(c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner;

(3) **BMP implementation** on public property;

(4) **Computer equipment and software** specific to the funded project and preapproved by the department;

(5) **Diagnostic studies** to assess current water quality;

(6) **Education and outreach** efforts for the public;

(7) **Environmental checklists, assessments, and impact statements** necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;

(8) **Equipment and tools** as identified in a grant or loan

agreement;

(9) **Ground water protection activities** such as wellhead protection and critical aquifer recharge area protection;

(10) **Hardship assistance** for wastewater treatment facilities construction, storm water management, and on-site septic system repair and replacement, and construction elements of a design-build-operate project;

(11) **Implementation** of eligible projects identified in water quality plans;

(12) **Indirect costs** as defined in the most recently updated edition of *Administrative Requirements for Ecology Grants and Loans* (publication #91-18);

(13) **Lake implementation and planning activities** on lakes with public access;

(14) **Landscaping for erosion control** directly related to a project, or site-specific landscaping in order to mitigate site conditions and comply with requirements in the State Environmental Policy Act or the National Environmental Policy Act;

(15) **Light refreshments** for meetings when specified in the loan or grant agreement;

(16) **Monitoring BMP effectiveness;**

(17) **Monitoring equipment** used for water quality assessment;

(18) **Monitoring water quality;**

(19) **On-site septic systems:**

(a) **Development and administration of a local loan fund for on-site septic system repair and replacement** for residential and small commercial systems; and

(b) **On-site wastewater** system surveys;

(20) **Model ordinances** development and dissemination of model ordinances to prevent or reduce pollution from nonpoint sources;

(21) **Planning** comprehensive basin, watershed, and area-wide water quality development;

(22) **Riparian and wetlands habitat restoration** and enhancement, including revegetation;

(23) **Sales tax;**

(24) **Stream restoration** that meets recognized water quality standards;

(25) **Storm water** certain nonpermit-related planning activities, such as education and outreach, establishing a storm water utility, identifying and mapping of pollution sources, and department-approved erosion control;

(26) **Total maximum daily load study** development and implementation;

(27) **Training** to develop specific skills that are necessary to directly satisfy the scope of work. Training, conference registration, or annual meeting fees must be preapproved by the department;

(28) **Wastewater or storm water utility development;**

(29) **Wastewater or storm water utility rate** or development impact fee studies;

(30) **Water quality education** and stewardship programs; and

(31) **Wellhead protection.**

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-100, filed 6/29/07, effective 7/30/07. Statutory Authority: Chapter 70.146 RCW. 01-01-042 (Order 00-10), § 173-95A-100, filed 12/8/00, effective 1/8/01.]

WAC 173-95A-110 Loan only eligible. Certain projects or project elements, including but not limited to the following may be eligible for centennial loan assistance:

- (1) **CAFOs**, for BMP implementation;
- (2) **Facilities** for wastewater and storm water:
 - (a) **Planning:**
 - (i) **Comprehensive sewer planning**, including wastewater elements of capital facilities planning under the Growth Management Act;
 - (ii) **Facilities planning** for water pollution control facilities; and
 - (iii) **Storm water** planning for permitted facilities;
 - (b) **Design** preparation of plans and specifications for water pollution control facilities;
 - (c) **Construction** of:
 - (i) Combined sewer overflow abatement;
 - (ii) Side sewers or individual pump stations or other appurtenances on private residential property;
 - (iii) Sewers and side sewers on public property for infiltration and inflow correction projects, and to replace existing water pollution control facilities;
 - (iv) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of storm water; and
 - (v) Water pollution control facility construction with reserve capacities to meet up to one hundred ten percent of existing residential needs;
 - (d) **Value engineering** for water pollution control facilities;
 - (e) **Design or construction** costs associated with design-build or design-build-operate contracts;
- (3) **Land acquisition:**
 - (a) As an integral part of the treatment process (e.g., land application);
 - (b) For prevention of water pollution;
 - (c) For siting of water pollution control facilities, sewer rights of way, easements, and associated costs; or
 - (d) for wetland habitat preservation;
- (4) **Legal expenses** will be determined on a case-by-case basis, such as development of local ordinances, use of a bond counsel, review of technical documents;
- (5) **On-site septic systems:**
 - (a) **Local loan fund** program development and administration;
 - (b) **New sewer systems** to eliminate failing or failed on-site septic systems;
- (6) **Spare parts** initial set of spare parts for equipment that is

critical for a facility to operate in compliance with discharge permit requirements; and

(7) **Transferring ownership** of a small wastewater system to a public body.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-110, filed 6/29/07, effective 7/30/07. Statutory Authority: Chapter 70.146 RCW. 01-01-042 (Order 00-10), § 173-95A-110, filed 12/8/00, effective 1/8/01.]

WAC 173-95A-120 Projects ineligible for centennial program funding. While it is impossible to list every project or project element that is not eligible, some examples of ineligible projects include:

- (1) **Abandonment** or demolition of existing structures;
- (2) **Acts of nature** that alter the natural environment, thereby causing water quality problems;
- (3) **Commercial, institutional or industrial** wastewater pretreatment;
- (4) **Compensation** or damages for any claim or injury of any kind arising out of the project, including any personal injury, damage to any kind of real or personal property, or any kind of contractual damages, whether direct, indirect, or consequential;
- (5) **Cost-plus-a-percentage-of-cost contracts** (also known as multiplier contracts), time and materials contracts, and percent-of-construction contracts in facilities projects;
- (6) **Facilities** intended solely to control, transport, treat, dispose, or otherwise manage commercial, institutional, or industrial wastewater;
- (7) **Fines and penalties** due to violations of or failure to comply with federal, state, or local laws;
- (8) **Flood control**, projects or project elements intended solely for flood control;
- (9) **Funding application preparation** for loans or grants;
- (10) **Interest** on bonds, interim financing, and associated costs to finance projects;
- (11) **Landscaping** for aesthetic reasons;
- (12) **Legal expenses** associated with claims and litigation;
- (13) **Lobbying** or expenses associated with lobbying;
- (14) **Monitoring equipment** for sampling and analysis of commercial, institutional, or industrial discharges;
- (15) **Office furniture** not included in the recipient's indirect rate;
- (16) **Operating expenses** of local government, such as the salaries and expenses of a mayor, city council member, city attorney, etc.;
- (17) **Operation and maintenance** costs;
- (18) **Overtime** differential paid to employees of a public body to complete administrative or force account work;
- (19) **Permit fees**;

- (20) **Professional dues;**
- (21) **Reclamation** of abandoned mines;
- (22) **Refinance** of existing debt;
- (23) **Rework costs** or previously funded objectives;
- (24) **Solid or hazardous waste;**
- (25) **Vehicle purchase** except for vehicles intended for the transportation of liquid or dewatered sludge or septage; and
- (26) **Water quantity** or other water resource projects that solely address water quantity issues.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-120, filed 6/29/07, effective 7/30/07.]

PART 2 LOAN INTEREST RATES

WAC 173-95A-200 Centennial clean water program loan interest rates. The department bases loan recipient interest rates on the average market interest rate. The average market interest rate is based on the daily market rate published in the bond buyer's index for tax-exempt municipal bonds for the period from sixty to thirty days before the annual funding application cycle begins. See WAC 173-95A-400 for hardship interest rates.

Loan terms and interest rates are as follows:

Repayment Period	Interest Rate
Up to five years:	Thirty percent of the average market rate.
More than five but no more than twenty years:	Sixty percent of the average market rate.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-200, filed 6/29/07, effective 7/30/07.]

PART 3 HOW TO APPLY FOR FUNDING

WAC 173-95A-300 Application for funding. (1) To apply for funding the applicant must submit a completed application to the department. The department will provide the application on the agency web site.

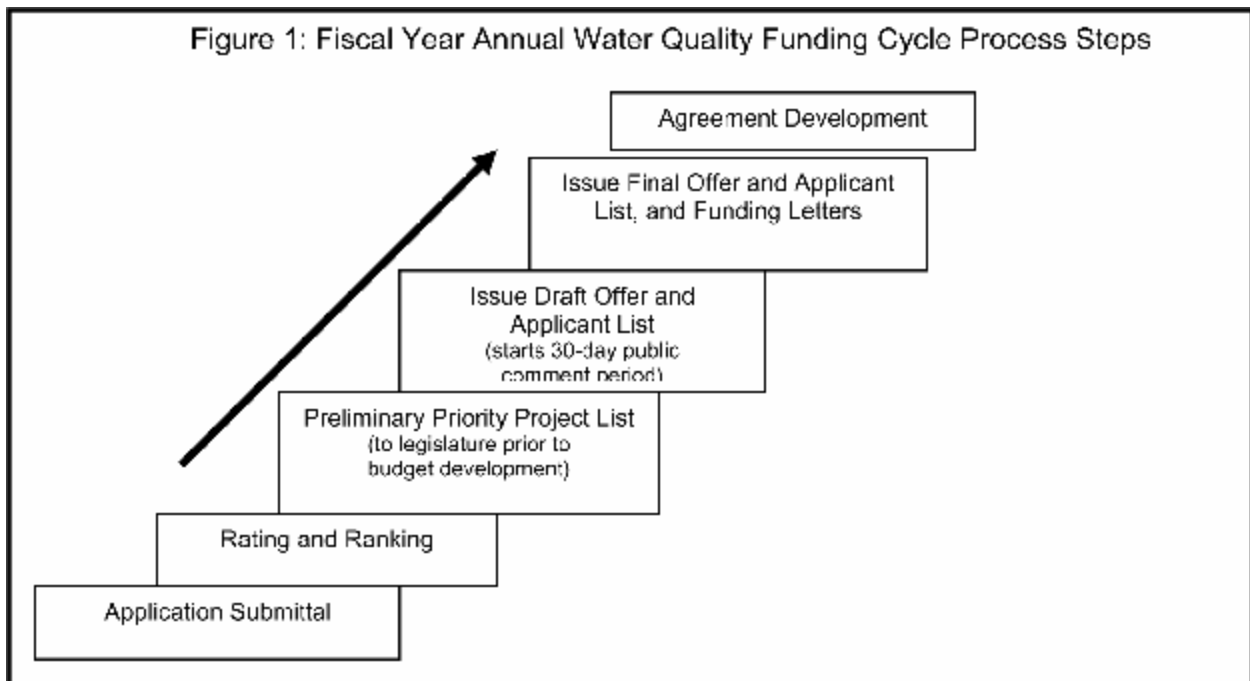
(2) The applicant may be asked to provide the following project information:

- (a) Basic information such as names of contacts, addresses, and other tracking information;
- (b) Project summary;
- (c) Project goals, objectives, and milestones;

- (d) Overall water quality benefits;
- (e) Public health benefits;
- (f) Sources of pollution addressed;
- (g) How the project will address state and federal mandates, elements in "Washington's water quality plan to control nonpoint sources of pollution," or other such plans;
- (h) Performance measures and postproject assessment monitoring;
- (i) Readiness to proceed, likelihood of success, and measures of success specific to the project;
- (j) Local initiatives, commitments, or priorities related to the project; or
- (k) Other information requested by the department.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-300, filed 6/29/07, effective 7/30/07.]

WAC 173-95A-310 Ecology's responsibilities. (1) A general funding cycle schedule is provided in figure 1.



- (2) Ecology will provide the following services:
 - (a) Make available the application and applicable guidelines before the associated funding cycle begins;
 - (b) Conduct at least one application workshop in each of ecology's four regions;
 - (c) Conduct preapplication workshops to discuss regional level priorities if applicable;
 - (d) After the application deadline, complete an initial review of project proposals for funding eligibility;
 - (e) Request other agencies to provide evaluation assistance as

needed;

(f) Rate and rank the applications using a consistent scoring system;

(g) Prepare a combined preliminary project priority list, after evaluation and scoring of all applications;

(h) Submit preliminary project priority list to the state legislature for budget consideration;

(i) Develop a combined draft offer and applicant list;

(j) Facilitate a public review and comment period for the combined draft offer and applicant list;

(k) Sponsor at least one public meeting to explain the combined draft offer and applicant list;

(l) Develop a combined "final offer and applicant list." Public comments collected during draft public review period will be incorporated and result in a responsiveness summary;

(m) Issue funding decision letters to all applicants; and

(n) Negotiate, develop, and finalize loan or grant agreements.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-310, filed 6/29/07, effective 7/30/07.]

WAC 173-95A-320 Final offer and applicant list. Loan and grant offers identified on the "final offer and applicant list" will be effective for up to one year from the publication date of the "final offer and applicant list." Loan and grant offers that do not result in a signed agreement are automatically terminated.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-320, filed 6/29/07, effective 7/30/07.]

PART 4 FINANCIAL HARDSHIP ASSISTANCE

WAC 173-95A-400 Wastewater treatment facilities construction.

(1) There are three primary factors considered in determining hardship funding for the construction portion of a wastewater treatment facilities projects:

(a) Service area population;

(b) Existing residential need at the time of application; and

(c) Level of financial burden placed on the ratepayers.

(2) **Service area population.** Applicants serving an area of twenty-five thousand or less can request hardship-funding consideration by submitting a financial hardship analysis form, provided by the department, along with the grant and loan funding application. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) **Existing residential need.** Water pollution control facilities construction costs that are associated with existing residential need plus ten percent at the time of application may be

eligible for funding. Additional reserve capacity for growth is not eligible for grant funding.

For example:

If an applicant applies for ten million dollars to finance facilities construction costs, where six million dollars is for existing residential need and the remaining four million dollars is for reserve capacity for growth, the applicant may be eligible for six million six hundred thousand dollars in grant funding.

Residential need:	\$6,000,000
Reserve capacity for growth (10% of \$6M):	<u>\$600,000</u>
Grant Eligible Amount	\$6,600,000

(4) **Level of financial burden.**

(a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percent of the median household income (MHI). The residential sewer user fee is calculated using:

- (i) Estimated construction cost;
 - (ii) Projected future operation and maintenance costs for the total facility;
 - (iii) The applicant's current and future debt service on the project;
 - (iv) Other grants;
 - (v) Existing annual operation, maintenance, and equipment replacement costs;
 - (vi) The total number of households existing at the time of application that will be served by the project; and
 - (vii) The nonresidential share of the total annual costs;
- (b) The sewer user fee as a percentage of the MHI is the basis for the department's grant and loan hardship-funding continuum (shown below in figure 2 and figure 3);
- (c) The most recent available census data determines the median household income. This data is updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the *Consumer Price Index*; and
- (d) If median household income data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the median household income.

(5) **Hardship grant ceiling amounts.** The department uses the grant hardship-funding continuum, shown in figure 2 below, to determine the percent of grant awarded. There is a funding ceiling of five million dollars per project.

For example:

When a grant applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer

user rates for the proposed project are between three and five percent of the median household income, the applicant may receive a grant of seventy-five percent of eligible project costs, not to exceed five million dollars (see figure 2 below).

(6) If a project in the hardship category receives partial funding due to department funding constraints, the department may offer the remaining funding, up to five million dollars, in the next funding cycle, and on a case-by-case basis. The department may require further hardship analysis before offering the remaining moneys.

(7) **Loan terms and interest rates.** The department uses the loan hardship-funding continuum, shown in figure 2 below, to determine the hardship-loan interest rates. There is a funding ceiling of five million dollars. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply. When a loan applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may be eligible for a twenty-year repayment term and a one percent interest rate. This interest rate represents twenty percent of the average market rate for tax-exempt municipal bonds (see figure 3 below).

(8) **Design-build-operate (construction portion).**

(a) Design-build or design-build-operate projects must be consistent with applicable statutes, such as chapter 39.10 RCW, Alternative public works contracting procedures, chapter 70.150 RCW, Water Quality Joint Development Act, and/or chapter 35.58 RCW, Metropolitan municipal corporations;

(b) The construction portion of a design-build-operate project under chapter 70.150 RCW, Water Quality Joint Development Act, may be eligible for a grant if the public body can demonstrate financial hardship in accordance with WAC 173-95A-400. Hardship-grant ceiling amounts found in WAC 173-95A-520 apply;

(c) Design-build-operate projects must comply with chapter 35.58 RCW, Metropolitan municipal corporations;

(d) The project scope of work must implement a department-approved facilities plan;

(e) In addition to the project application information found in WAC 173-95A-300, the project will be evaluated on the applicant's level of administrative and technical expertise;

(f) At the time of application, the following must be provided:

(i) A legal opinion from an attorney of the public body indicating that the public body has sufficient legal authority to utilize the process;

(ii) A department-approved facilities plan;

(iii) A report detailing the projected savings based on a cost

and time-to-complete as compared to the traditional design-bid-construct process;

(g) The department may require that the public body obtain delegation authority consistent with chapter 90.48 RCW, Water pollution control, and assume the responsibility for sequential review and approval of plans, specifications, and change orders. The department will continue to make all eligibility determinations;

(h) Costs associated with change orders are not eligible for reimbursement;

(i) Projects must be completed according to the timeline in WAC 173-95A-700 and 173-95A-710; and

(j) Before the loan agreement is signed, the following must be approved by the department:

- (i) Primary design elements;
- (ii) Final service agreements.

(9) **Extended grant payments.** In some cases, the legislature may appropriate extended grant payments per RCW 70.146.075.

(10) **Figure 2: Grant Hardship-Funding Continuum**

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but below 5.0%	5.0% and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI))
Grant Hardship-Funding Continuum	0% Grant	50% Grant (up to five million dollars)	75% Grant (up to five million dollars)	100% Grant (up to five million dollars)

(11) **Figure 3: Loan Hardship-Funding Continuum**

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but below 5.0%	5.0% and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI))
Loan Hardship-Funding Continuum	Loan at 60% of market rate	Loan at 40% of market rate	Loan at 20% of market rate	Loan at 0% interest

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-400, filed 6/29/07, effective 7/30/07.]

WAC 173-95A-410 On-site septic system repair and replacement programs. Applicants may apply for grant funding in conjunction with a state water pollution control revolving fund loan to establish or continue programs that provide hardship funding for on-site septic

system repair and replacement for homeowners and small commercial enterprises. The ceiling amounts used for activities grants, cited in WAC 173-95A-520, also apply.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-410, filed 6/29/07, effective 7/30/07.]

WAC 173-95A-420 Storm water projects. (1) Storm water-related activities, such as education and outreach, monitoring, and some planning efforts, are not grant eligible when those activities are required under a permit, unless the applicant can demonstrate financial hardship.

(2) There are three primary factors in determining financial hardship for storm water projects:

- (a) Service area population;
- (b) Presence of a permit; and
- (c) Community's median household income (MHI).

(3) **Service area population, presence of permit, and median household income.** Applicants under a permit, whose service area population is less than twenty-five thousand, and whose median household income is sixty percent or less of the average statewide MHI, can request hardship-funding consideration.

(4) In rare cases where financial hardship cannot be determined using population and percent of median household income, the department will make financial hardship determinations on a case-by-case basis.

(a) The most recent available census data determines the statewide average median household income; and

(b) This data is updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the *Consumer Price Index*.

(5) **Matching requirements, percent of grant, and grant ceiling amounts.** Storm water-hardship grants are fifty percent grants with a fifty percent cash-matching requirement.

The maximum amount available for a storm water-hardship grant is \$500,000.

For example:

When a grant applicant whose service area population is twenty-five thousand or less can demonstrate that its MHI is sixty percent or less of the average statewide MHI, the applicant may be eligible for a fifty percent grant, not to exceed five hundred thousand dollars.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-420, filed 6/29/07, effective 7/30/07.]

PART 5
REQUIREMENTS FOR MANAGING GRANTS AND LOANS

WAC 173-95A-500 Funding allocation. There are two project categories in which the competitive funding is allocated: Activities and facilities.

(1) The scores derived from the application rating and ranking process will determine the allocation of the competitive funding;

(2) No more than two-thirds of the fund can go to either category;

(3) If the demand for funding is low in either category, then moneys may be shifted amongst categories; and

(4) The department will adjust the funding allocation based on the following:

(a) To provide match for other funding sources, such as the Clean Water Act section 319 nonpoint source fund or other funding programs; or

(b) To comply with funding restrictions in legislative appropriations.

For example:

If fifty percent of the competitive centennial program funding is comprised of state building construction account moneys, then fifty percent of the centennial program funding must be allocated to projects approved for that funding source.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-500, filed 6/29/07, effective 7/30/07.]

WAC 173-95A-510 Funding recognition. (1) The recipient must acknowledge department funding in reports, technical documents, publications, brochures, and other materials.

(2) Site-specific projects must display a sign acknowledging department funding. The sign must be large enough to be seen from nearby roadways, and include a department logo.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-510, filed 6/29/07, effective 7/30/07.]

WAC 173-95A-520 Ceiling amounts. (1) **Activities projects.** Grants for activities projects made under the centennial program are subject to ceiling amounts of:

(a) Five hundred thousand dollars if the match for the grant is in the form of cash and/or interlocal costs; or

(b) Two hundred fifty thousand dollars if any part of the match is in the form of in-kind goods and services; and

(c) Five hundred thousand dollars for activities project loans.

(2) **Facilities projects.** Loans are subject to ceiling amounts of five million dollars.

(3) **Hardship projects.** Grants for facilities construction

projects are subject to ceiling amounts of five million dollars.

(4) **Partially funded projects.** If a project is offered partial funding due to the lack of available centennial moneys, and the recipient is demonstrating progress on the project, the recipient may apply for the remaining eligible project costs in the subsequent funding cycle.

(5) **Water pollution control facilities construction bid overruns.**

(a) If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's original estimate;

(b) The ceiling amounts in the year the project was offered funding and as established in WAC 173-95A-520 apply; and

(c) First priority for availability of moneys will be given to hardship communities based on the severity of financial need. For more information, see WAC 173-95A-400.

(6) **Water pollution control facilities construction change orders:**

(a) The department may approve funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s);

(b) The ceiling amounts in the year the project was offered funding and as established in WAC 173-95A-520 apply; and

(c) First priority for availability of moneys will be given to hardship communities based on the severity of financial need. For more information on hardship, see WAC 173-95A-400.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-520, filed 6/29/07, effective 7/30/07.]

WAC 173-95A-530 Match. (1) Depending on the grant amount, match can consist of cash or interlocal and in-kind contributions that total twenty-five percent of the total eligible project cost.

(2) No match is required for loans under the centennial program.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-530, filed 6/29/07, effective 7/30/07.]

WAC 173-95A-540 Step process for facilities. (1) The step process is required for facilities construction projects. The process begins with site-specific planning, and continues through design to construction or implementation. At the time of application, all previous steps must be approved by the department. Draft documents must be sent to the department's engineers at least sixty days prior to end of application cycle for approval by end of application cycle. Funding for one step does not guarantee the future funding of subsequent steps.

(2) The step process includes the following:

(a) **Planning (step one):** Step one involves the preparation of a

site-specific facilities plan that identifies the cost-effective alternatives for addressing a water pollution control problem. There is no prerequisite for planning. If there is an existing engineering report, it must be upgraded to a facilities plan;

(b) **Design (step two):** Step two includes the preparation of plans and specifications for use in construction. These must be based on the preferred cost-effective alternative identified in the facilities plan. Facilities plans must be approved by the department before an application for design can be considered for funding. Facilities plans approved by the department more than two years prior to the close of the application period must contain evidence of recent review by the department to ensure the document reflects current conditions; and

(c) **Construction (step three):** Step three includes the actual building of facilities based on the approved design. Design must be approved by the department before an application for construction can be considered for funding.

(3) **Combined steps for smaller design-bid-construct projects (step four):** In some cases, design and construction may be combined into one loan. Step four applicants must demonstrate that step two (design) can be completed and approved by the department within one year of the effective date of the funding agreement. The total project costs for step four projects must be five million dollars or less.

(4) **Step deviations.** During the application phase of the funding cycle, the department may allow an applicant to deviate from the traditional step requirements if:

(a) The Washington state department of health has declared a public health emergency; and

(b) The proposed project would remedy this situation.

No loan agreement will be signed until all previous steps have been completed and approved by the department.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-540, filed 6/29/07, effective 7/30/07.]

WAC 173-95A-550 Commercial, industrial, and institutional flows. (1) The portion of a project designed to serve the needs of commercial, industrial, and institutional customers may be funded using loans only.

(2) Capacity to serve local public primary and secondary schools may be grant eligible if the applicant can demonstrate financial hardship according to WAC 173-95A-400.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-550, filed 6/29/07, effective 7/30/07.]

WAC 173-95A-560 Step process for water pollution control activities. The step process is required for lake projects and

recommended for all activities projects.

(1) **Planning** involves the identification of problems and evaluation of cost-effective alternatives.

(2) **Implementation** is the actual implementation of the project based on the planning document. Where the project includes construction, a design element may be included before the implementation step.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-560, filed 6/29/07, effective 7/30/07.]

WAC 173-95A-570 Performance measures and postproject assessment. (1) The department may require a recipient to develop and implement a postproject assessment plan.

(2) A recipient may be required to participate in a postproject survey and interview regarding performance measures.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-570, filed 6/29/07, effective 7/30/07.]

PART 6 COMPLIANCE WITH OTHER LAWS, RULES, AND REQUIREMENTS

WAC 173-95A-600 General requirements. (1) Recipients must fully comply with all applicable federal, state, and local laws and regulations relating to topics such as procurement, discrimination, labor, job safety, drug-free environments, and minority and women owned businesses.

(2) Ongoing management of most aspects of loan projects is subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*.

(3) Ongoing management of all aspects of loan projects is subject to the associated funding program guidelines.

(4) The applicant shall secure all necessary permits required by authorities having jurisdiction over the project. Copies must be available to the department upon request.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-600, filed 6/29/07, effective 7/30/07.]

WAC 173-95A-610 The Growth Management Act. (1) A local government not in compliance with the Growth Management Act may not receive loans or grants from the department, except, in limited circumstances, where a local government must address a public health need or substantial environmental degradation.

(2) For the purposes of this section, "compliance with the Growth Management Act" means that:

A county, city, or town that is required to or chooses to plan

under RCW 36.70A.040 has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by chapter 36.70A RCW.

(3) For the purposes of this chapter, a public health need related to a loan or grant must be documented by a letter signed by the secretary of the Washington state department of health or his or her designee and addressed to the public official who signed the loan or grant application. "Public health need" means a situation where:

(a) There is a documented potential for:

(i) Contaminating a source of drinking water; or

(ii) Failure of existing wastewater system or systems resulting in contamination being present on the surface of the ground in such quantities and locations as to create a potential for public contact; or

(iii) Contamination of a commercial or recreational shellfish bed as to create a critical public health risk associated with consumption of the shellfish; or

(iv) Contamination of surface water so as to create a critical public health risk associated with recreational use; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(4) For the purposes of this chapter, a substantial environmental degradation related to a loan or grant must be documented by a letter signed by the director and addressed to the public official who signed the loan or grant application.

"Substantial environmental degradation" means that:

(a) There is a situation causing real, documented, critical environmental contamination that:

(i) Contributes to violations of the state's water quality standards; or

(ii) Interferes with beneficial uses of the waters of the state; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(5) A county, city, or town that has been offered a loan or grant for a water pollution control facilities project may not receive loan or grant funding while the county, city, or town is not in compliance with the Growth Management Act unless:

(a) Documentation showing that a public health need has been provided by the Washington state department of health; or documentation showing that a substantial environmental degradation exists has been provided by the department; and

(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address

the public health need or substantial environmental degradation; and

(c) The department has determined that the project is designed to address only the public health need or substantial environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-610, filed 6/29/07, effective 7/30/07.]

PART 7 TIMELY USE OF CENTENNIAL PROGRAM MONEYS

WAC 173-95A-700 Starting a project. Costs incurred before a grant or loan agreement is effective are not eligible for reimbursement, unless prior authorization is granted by the department.

(1) Prior authorization to incur costs.

(a) An applicant may request prior authorization to incur eligible project costs if the following applies:

- (i) The project is identified on the "final offer and applicant list";
- (ii) Costs are incurred between the publication date of the "final offer and applicant list" and when the funding agreement is signed by the water quality program manager or other schedules set in the prior authorization letter; and
- (iii) The written request is made to the water quality program manager;

(b) The water quality program manager will send the applicant a letter approving or denying the prior authorization; and

(c) Any project costs incurred prior to the publication date of the "final offer and applicant list" are not eligible for reimbursement. All costs incurred before the agreement is signed by the water quality program manager are at the applicant's own risk.

(2) Project initiation. Grant or loan moneys must be spent in a timely fashion. The recipient must consistently meet the performance measures agreed to in the grant or loan agreement. These performance measures include, but are not limited to, the following:

(a) Work on a project must be started within sixteen months of the publication date of the "final offer and applicant list" on which the project was proposed.

(b) Starting a project means making any measurable steps toward achieving the milestones, objectives, and overall goals of the project.

(c) Loan and grant offers identified on the "final offer and applicant list" will be effective for up to one year from the publication date of the "final offer and applicant list." Loan and grant offers that do not result in a signed agreement are automatically terminated, see WAC 173-95A-320 Final offer and applicant list.

(3) Project initiation extension. Certain circumstances may

allow a time extension of no more than twelve months for starting a project. For example:

(a) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(b) There is a need to do work during an environmental window in a specific season of the year.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-700, filed 6/29/07, effective 7/30/07.]

WAC 173-95A-710 Finishing a project. Costs incurred after the project completion or expiration dates are not eligible for reimbursement.

(1) **Project completion.**

(a) Work on a project must be completed within five years of the publication date of the "final offer and applicant list" on which the project was proposed. A shorter time period may be specified in the grant or loan agreement; and

(b) Completing a project means fulfilling all milestones and objectives associated with the goals of the grant or loan agreement.

(2) **Project completion extension.**

(a) After the five-year limit is reached, a time extension of no more than twelve months may be made under certain circumstances, including but not limited to:

(i) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(ii) There is a need to do work during an environmental window in a specific season of the year; and

(b) To ensure timely processing, the time extension request must be made prior to the completion or expiration date of the loan or grant agreement.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-710, filed 6/29/07, effective 7/30/07.]

PART 8 GENERAL ADMINISTRATIVE PROVISION

WAC 173-95A-800 Accounting requirements for grant and loan recipients. (1) Recipients must maintain accounting records in accordance with RCW 43.09.200, Local government accounting--Uniform system of accounting. For example, charges must be properly supported, related to eligible costs, and documented by appropriate records. These records must be maintained separately.

(2) Accounting irregularities may result in an immediate payment hold. The director may require immediate repayment of misused loan or grant moneys.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-800, filed 6/29/07, effective 7/30/07.]

WAC 173-95A-810 Appealing a department decision. If a dispute arises concerning eligibility decisions made by the department within the context of a loan agreement, the decision may be appealed. A lawsuit cannot be brought to superior court unless the aggrieved party follows these procedures, which are intended to encourage the informal resolution of disputes consistent with RCW 34.05.060.

(1) First, the recipient may seek review of the financial assistance program's initial decision within thirty days of the decision by a written appeal to the water quality program manager. The program manager will consider the appeal information and may choose to discuss the matter by telephone or in person;

(2) The program manager will issue a written decision within thirty days from the time the appeal is received;

(3) If the recipient is not satisfied with the program manager's decision, the recipient may request review of the decision within thirty days to the deputy director;

(4) The deputy director will consider the appeal information, and may chose to discuss the matter by telephone or in person. The deputy director will issue a written decision within thirty days from the time the appeal is received, and that decision will be the final decision of the department;

(5) If the recipient is not satisfied with the deputy director's final decision, the recipient may appeal to the Thurston County superior court, pursuant to RCW 34.05.570(4), which pertains to the review of "other agency action"; and

(6) Unless all parties to such appeal agree that a different time frame is appropriate, the parties shall attempt to bring the matter for a superior court determination within four months of the date in which the administrative record is filed with the court. This time frame is to ensure minimal disruptions to the program.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-810, filed 6/29/07, effective 7/30/07.]

WAC 173-95A-820 Audit requirements for grant and loan recipients. The department, or at the department's discretion another authorized auditor, will audit the grant or loan agreement and records.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-95A-820, filed 6/29/07, effective 7/30/07]

Chapter 173.98 WAC

Uses and Limitations of the Water Pollution Control Revolving Fund

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WAC 173-98-010 Purpose. The purpose of this chapter is to set forth requirements for the department of ecology's administration of the Washington state water pollution control revolving fund, as authorized by chapter 90.50A RCW, water pollution control facilities financing. This fund is primarily comprised of federal capitalization grants, state matching moneys, and principal and interest repayments. It is used to provide loan assistance to public bodies for statewide, high-priority water quality projects that are consistent with the Clean Water Act, 33 U.S.C. 1251-1387.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-010, filed 6/29/07, effective 7/30/07. Statutory Authority: RCW 43.21.080 and chapters 34.05 and 90.50A RCW. 98-24-036 (Order 98-10), § 173-98-010, filed 11/24/98, effective 12/25/98. Statutory Authority: Chapter 90.50A RCW. 89-18-019 (Order 89-34), § 173-98-010, filed 8/29/89, effective 9/29/89.]

WAC 173-98-020 Integrated funding approach. (1) Where possible, the Washington state department of ecology combines the management of the Washington state water pollution control revolving fund with other funding programs, such as the centennial clean water program, and the federal Clean Water Act section 319 nonpoint source fund.

(2) The integrated funding process includes a combined funding cycle, program guidelines, funding offer and applicant list, and statewide funding workshops.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-020, filed 6/29/07, effective 7/30/07. Statutory Authority: Chapter 90.50A RCW. 01-01-043 (Order 00-11), § 173-98-020, filed

12/8/00, effective 1/8/01. Statutory Authority: RCW 43.21.080 and chapters 34.05 and 90.50A RCW. 98-24-036 (Order 98-10), § 173-98-020, filed 11/24/98, effective 12/25/98. Statutory Authority: Chapter 90.50A RCW. 89-18-019 (Order 89-34), § 173-98-020, filed 8/29/89, effective 9/29/89.]

WAC 173-98-030 Definitions. For the purposes of this chapter:

- (1) **Act** means the federal Clean Water Act (33 U.S.C. 1251-1387).
- (2) **Activities** see water pollution control activities.
- (3) **Annual debt service** means the amount of debt the applicant is obligated to pay on the loan in one year.
- (4) **Applicant** means a public body that has applied for funding.
- (5) **Best management practices** (BMP) means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.
- (6) **Ceiling amount** means the highest level of financial assistance the department can provide to a recipient for an individual project.
- (7) **Commercial, industrial, and institutional flows** mean the portion of the total flows to a facility that originate from commercial establishments, industrial facilities, or institutional sources such as schools, hospitals, and prisons.
- (8) **Competitive funding** means moneys available for projects through a statewide evaluation process.
- (9) **Completion date** or **expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.
- (10) **Concentrated animal feeding operation** (CAFO) means:
 - (a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five-year, twenty-four-hour storm event;
 - (b) An operation that is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit;
 - (c) An operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or
 - (d) An operation designated by the Environmental Protection Agency as polluting the waters of Washington state.
- (11) **Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.
- (12) **Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.
- (13) **Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

(14) **Cost-effective alternative** means the option selected in an approved facilities plan that meets the requirements of the project, recognizes environmental and other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., lowest present worth or equivalent annual value).

(15) **Department** means the Washington state department of ecology.

(16) **Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

(17) **Director** means the director of the Washington state department of ecology or his or her authorized designee.

(18) **Draft offer and applicant list** means a catalog of all projects considered and proposed for funding based on an evaluation and the appropriations in the Washington state capital budget.

(19) **Easement** means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to inspect, maintain, or repair loan-funded activities or facilities.

(20) **Effective date** means the date the loan agreement is signed by the department's water quality program manager.

(21) **Eligible cost** means the portion of the facilities or activities project that can be funded.

(22) **Enforcement order** means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

(23) **Engineering report** means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

(24) **Environmental degradation** means the reduced capacity of the environment to meet social and ecological objectives and needs.

(25) **Environmental emergency** means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

(26) **Estimated construction cost** means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

(27) **Existing need** means water pollution control facility's capacity reserved for all users, at the time of application, in order to meet the requirements of the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

(28) **Existing residential need** means water pollution control facility's capacity reserved for the residential population, at the time of application, in order to meet the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

(29) **Facilities** see water pollution control facility.

(30) **Facilities plan** means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

(31) **Federal capitalization grant** means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the state water pollution control revolving fund.

(32) **Final offer and applicant list** means a catalog of all projects considered and proposed for funding and those offered funding.

(33) **Force account** means loan project work performed using labor, materials, or equipment of a public body.

(34) **Funding category** see "water pollution control activities funding category" and "water pollution control facilities funding category."

(35) **Funding cycle** means the events related to the competitive process used to allocate moneys from the Washington state water pollution control revolving fund, centennial clean water program, and the Clean Water Act section 319 nonpoint source fund for a state fiscal year.

(36) **General obligation debt** means an obligation of the recipient secured by annual ad valorem taxes levied by the recipient and by the full faith, credit, and resources of the recipient.

(37) **Indirect cost** means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

(38) **Infiltration and inflow** means water, other than wastewater, that enters a sewer system.

(39) **Infiltration and inflow correction** means the cost-effective alternative or alternatives and the associated corrective actions identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow to existing sewer system.

(40) **Initiation of operation** means the actual date the recipient begins using, or could begin using, the facilities for its intended purpose. This date may occur prior to final inspection or project completion.

(41) **Intended use plan** (IUP) means a document identifying the types of projects proposed and the amount of all money available for financial assistance from the water pollution control revolving fund for a fiscal year as described in section 606(c) of the act.

(42) **Landowner agreement** means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

(43) **Loan agreement** means a contractual arrangement between a public body and the department that involves a disbursement of moneys that must be repaid.

(44) **Loan default** means failure to make a loan repayment to the department within sixty days after the payment was due.

(45) **Nonpoint source water pollution** means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from some boats or other marine vessels.

(46) **Perpetuity** means the point at which the water pollution control revolving fund is earning at least fifty percent of the market rate for tax-exempt municipal bonds on its loan portfolio.

(47) **Plans and specifications** means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

(48) **Preliminary project priority list** means a catalog of all projects considered for funding based on the governor's budget and submitted to the Washington state legislature for its consideration during budget development.

(49) **Project** means a water quality improvement effort funded with a grant or loan.

(50) **Project completion** or **expiration** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

(51) **Public body** means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.

(52) **Public health emergency** means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

(53) **Recipient** means a public body that has an effective loan agreement with the department.

(54) **Reserve account** means an account created by the recipient to secure the payment of the principal and interest on the water pollution control revolving fund loan.

(55) **Revenue-secured debt** means an obligation of the recipient secured by a pledge of the revenue of a utility.

(56) **Revolving fund** means the water pollution control revolving fund.

(57) **Riparian buffer** or **zone** means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

(58) **Scope of work** means a detailed description of project tasks, milestones, and measurable objectives.

(59) **Senior lien obligations** means all revenue bonds and other obligations of the recipient outstanding on the date of execution of

a loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of a loan agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.

(60) **Service area population** means the number of people served in the area of the project.

(61) **Severe public health hazard** means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

(62) **Sewer** means the pipe and related pump stations located on public property, or on public rights of way and easements that convey wastewater from buildings.

(63) **Side sewer** means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

(64) **State environmental review process (SERP)** means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

(65) **Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

(66) **Total project cost** means the sum of all expenses associated with a water quality project.

(67) **Water pollution** means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders such waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(68) **Water pollution control activities or activities** means actions taken by a public body for the following purposes:

- (a) To prevent or mitigate pollution of underground water;
- (b) To control nonpoint sources of water pollution;
- (c) To restore the water quality of freshwater lakes; and
- (d) To maintain or improve water quality through the use of water pollution control facilities or other means.

(69) **Water pollution control activities funding category** means that portion of the water pollution control revolving fund dedicated to nonpoint source pollution projects.

(70) **Water pollution control facility or facilities** means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes. Facilities include all

necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

(71) **Water pollution control facilities funding category** means that portion of the water pollution control revolving fund dedicated to facilities projects.

(72) **Water pollution control revolving fund** (revolving fund) means the water pollution control revolving fund established by RCW 90.50A.020.

(73) **Water resource inventory area** (WRIA) means one of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-030, filed 6/29/07, effective 7/30/07. Statutory Authority: Chapter 90.50A RCW. 01-01-043 (Order 00-11), § 173-98-030, filed 12/8/00, effective 1/8/01; 00-09-010 (Order 00-02), § 173-98-030, filed 4/7/00, effective 5/8/00. Statutory Authority: RCW 43.21.080 and chapters 34.05 and 90.50A RCW. 98-24-036 (Order 98-10), § 173-98-030, filed 11/24/98, effective 12/25/98. Statutory Authority: Chapter 90.50A RCW. 89-18-019 (Order 89-34), § 173-98-030, filed 8/29/89, effective 9/29/89.]

WAC 173-98-040 Water pollution control revolving fund (revolving fund) uses. The revolving fund may be used for the following purposes:

(1) To provide loans to finance the planning, design, and/or construction of water pollution control facilities;

(2) To provide loans for nonpoint source pollution control management projects that implement the Washington's water quality management plan to control nonpoint sources of pollution, and for developing and implementing a conservation and management plan under section 320 of the act;

(3) To provide loans for up to twenty years reserve capacity for water pollution control facilities;

(4) To buy or refinance the debt obligations incurred by applicants after March 7, 1985, for the construction of water pollution control facilities;

(5) To guarantee or purchase insurance for local obligations to improve credit market access or reduce interest rates;

(6) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of those bonds will be deposited in the revolving fund; and

(7) To finance administration costs incurred by the department as authorized by the act and chapter 90.50A RCW.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-040, filed 6/29/07, effective 7/30/07. Statutory Authority: Chapter 90.50A RCW. 01-01-043 (Order 00-11), § 173-98-040, filed 12/8/00, effective 1/8/01. Statutory Authority: RCW 43.21.080 and

chapters 34.05 and 90.50A RCW. 98-24-036 (Order 98-10), § 173-98-040, filed 11/24/98, effective 12/25/98. Statutory Authority: Chapter 90.50A RCW. 89-18-019 (Order 89-34), § 173-98-040, filed 8/29/89, effective 9/29/89.]

PART 1 ELIGIBLE PROJECT TYPE

WAC 173-98-100 Eligible. Certain projects or project elements, including, but not limited to the following, may be eligible for loan assistance:

(1) **Aquatic plant control** when the water quality degradation is due to the presence of aquatic plants, and the source(s) of pollution is addressed sufficiently to ensure that the pollution is eliminated;

(2) **BMP implementation** on private property:

(a) Best management practices that consist of new, innovative, or alternative technology not yet demonstrated in the department's region in which it is proposed;

(b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a conservation easement or landowner agreement is granted by the landowner; and

(c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner.

(3) **BMP implementation** on public property;

(4) **Capacity for growth.** Loans for up to twenty years capacity for water pollution control facilities. Capacity in excess of the twenty year design capacity are not eligible;

(5) **Computer equipment and software** specific to the funded project and preapproved by the department;

(6) **Confined animal feeding operations (CAFO)** water pollution control projects located in federally designated national estuaries;

(7) **Conservation planning;**

(8) **Design-build or design-build-operate** (alternative contracting/service agreements) for water pollution control facilities and other alternative public works contracting procedures;

(9) **Diagnostic studies** to assess current water quality;

(10) **Education and outreach** efforts for the public;

(11) **Environmental checklists, assessments, and impact statements** necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;

(12) **Equipment and tools** as identified in a loan agreement;

(13) **Facilities** for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water for residential, and/or a combination of residential, commercial, institutional and industrial:

(a) **Planning:**

(i) **Comprehensive sewer planning**, including wastewater elements of capital facilities planning under the growth management act;

- (ii) **Storm water planning;**
- (iii) **Facilities planning** for water pollution control facilities;
- (b) **Design** preparation of plans and specifications for water pollution control facilities;
- (c) **Construction** of:
 - (i) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water;
 - (ii) Combined sewer overflow abatement;
 - (iii) Facilities to meet existing needs plus twenty years for growth;
 - (iv) Side sewers or individual pump stations or other appurtenances on private residential property if solving a nonpoint source pollution problem, such as failing on-site septic systems;
 - (v) Side sewers existing on public property or private property (with an easement) to correct infiltration and inflow and replace existing water pollution control facilities; and
 - (vi) New sewer systems to eliminate failing or failed on-site septic systems;
- (d) **Value engineering** for water pollution control facilities;
- (e) **Design or construction** costs associated with design-build or design-build-operate contracts.
- (14) **Ground water protection activities** such as wellhead protection and critical aquifer recharge area protection;
- (15) **Hardship assistance** for wastewater treatment facilities construction, storm water, and on-site septic system repair and replacement;
- (16) **Indirect costs** as defined in the most recently updated edition of *Administrative Requirements for Ecology Grants and Loans* (publication #91-18);
- (17) **Lake implementation and associated planning activities** on lakes with public access;
- (18) **Land acquisition:**
 - (a) As an integral part of the treatment process (e.g., land application); or
 - (b) For wetland habitat preservation;
- (19) **Landscaping for erosion control** directly related to a project, or site-specific landscaping in order to mitigate site conditions and comply with requirements in the SERP;
- (20) **Legal expenses** will be determined on a case-by-case basis, such as development of local ordinances, use of a bond counsel, review of technical documents;
- (21) **Light refreshments** for meetings when preapproved by the department;
- (22) **Monitoring BMP effectiveness;**
- (23) **Monitoring equipment** used for water quality assessment;
- (24) **Monitoring water quality;**
- (25) **Model ordinances** development and dissemination of model ordinances to prevent or reduce pollution from nonpoint sources;
- (26) **On-site septic systems:**

- (a) **On-site septic system repair and replacement** for residential and small commercial systems;
- (b) **On-site wastewater** system surveys;
- (c) **Local loan fund** program development and implementation;
- (27) **Planning** comprehensive basin, watershed, and area-wide water quality development;
- (28) **Refinancing** of water pollution control facility debt;
- (29) **Riparian and wetlands habitat restoration** and enhancement, including revegetation;
- (30) **Sales tax**;
- (31) **Spare parts** initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements;
- (32) **Stream restoration projects**;
- (33) **Total maximum daily load study** development and implementation;
- (34) **Training** to develop specific skills that are necessary to directly satisfy the funding agreement scope of work. Training, conference registration or annual meeting fees must be preapproved by the department;
- (35) **Transferring ownership** of a small wastewater system to a public body;
- (36) **Wastewater or storm water utility development**;
- (37) **Wastewater or storm water utility rate** or development impact fee studies;
- (38) **Water quality education** and stewardship programs.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-100, filed 6/29/07, effective 7/30/07. Statutory Authority: RCW 43.21.080 and chapters 34.05 and 90.50A RCW. 98-24-036 (Order 98-10), § 173-98-100, filed 11/24/98, effective 12/25/98. Statutory Authority: Chapter 90.50A RCW. 89-18-019 (Order 89-34), § 173-98-100, filed 8/29/89, effective 9/29/89.]

WAC 173-98-110 Noneligible. Certain projects or project elements, including but not limited to the following are not eligible for loan assistance:

- (1) **Abandonment** or demolition of existing structures not interfering with proposed construction of a wastewater or storm water treatment facility;
- (2) **Acts of nature** that alter the natural environment, thereby causing water quality problems;
- (3) **Aquatic plant control** for aesthetic reasons, navigational improvements, or other purposes unrelated to water quality;
- (4) **Bond costs** for debt issuance;
- (5) **Bonus or acceleration payments** to contractors to meet contractual completion dates for construction;
- (6) **Commercial, institutional or industrial** wastewater pollution control activities or facilities or portions of those facilities that

are solely intended to control, transport, treat, dispose, or otherwise manage wastewater;

(7) **Commercial, institutional or industrial** monitoring equipment for sampling and analysis of discharges from municipal water pollution control facilities;

(8) **Commercial, institutional or industrial** wastewater pretreatment;

(9) **Compensation** or damages for any claim or injury of any kind arising out of the project, including any personal injury, damage to any kind of real or personal property, or any kind of contractual damages, whether direct, indirect, or consequential;

(10) **Cost-plus-a-percentage-of-cost contracts** (also known as multiplier contracts), time and materials contracts, and percent-of-construction contracts in facilities projects;

(11) **Engineering reports;**

(12) **Fines and penalties** due to violations of or failure to comply with federal, state, or local laws;

(13) **Flood control**, projects or project elements intended solely for flood control;

(14) **Funding application preparation** for loans or grants;

(15) **Interest** on bonds, interim financing, and associated costs to finance projects;

(16) **Landscaping** for aesthetic reasons;

(17) **Legal expenses** associated with claims and litigation;

(18) **Lobbying** or expenses associated with lobbying;

(19) **Mitigation** unless it addresses water quality impacts directly related to the project, and determined on a case-by-case basis;

(20) **Office furniture** not included in the recipient's indirect rate;

(21) **Operating expenses** of local government, such as the salaries and expenses of a mayor, city council member, city attorney, etc.;

(22) **Operation and maintenance** costs;

(23) **Overtime** differential paid to employees of public body to complete administrative or force account work;

(24) **Permit fees;**

(25) **Personal injury compensation** or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or other means;

(26) **Professional dues;**

(27) **Reclamation** of abandoned mines;

(28) **Refinancing** of existing debt;

(29) **Solid or hazardous waste cleanup;**

(30) **Vehicle purchase** except for vehicles intended for the transportation of liquid, dewatered sludge, septage, or special purpose vehicles as approved by the department; and

(31) **Water quantity** or other water resource projects that solely address water quantity issues.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-110, filed 6/29/07, effective 7/30/07. Statutory Authority: Chapter 90.50A RCW. 01-01-043 (Order 00-11), § 173-98-110, filed 12/8/00, effective 1/8/01. Statutory Authority: RCW 43.21.080 and chapters 34.05 and 90.50A RCW. 98-24-036 (Order 98-10), § 173-98-110, filed 11/24/98, effective 12/25/98. Statutory Authority: Chapter 90.50A RCW. 89-18-019 (Order 89-34), § 173-98-110, filed 8/29/89, effective 9/29/89.]

PART 2 HOW TO APPLY FOR FUNDING

WAC 173-98-200 Application for funding. (1) To apply for funding the applicant must submit a completed application to the department. The department will provide the application on the agency web site.

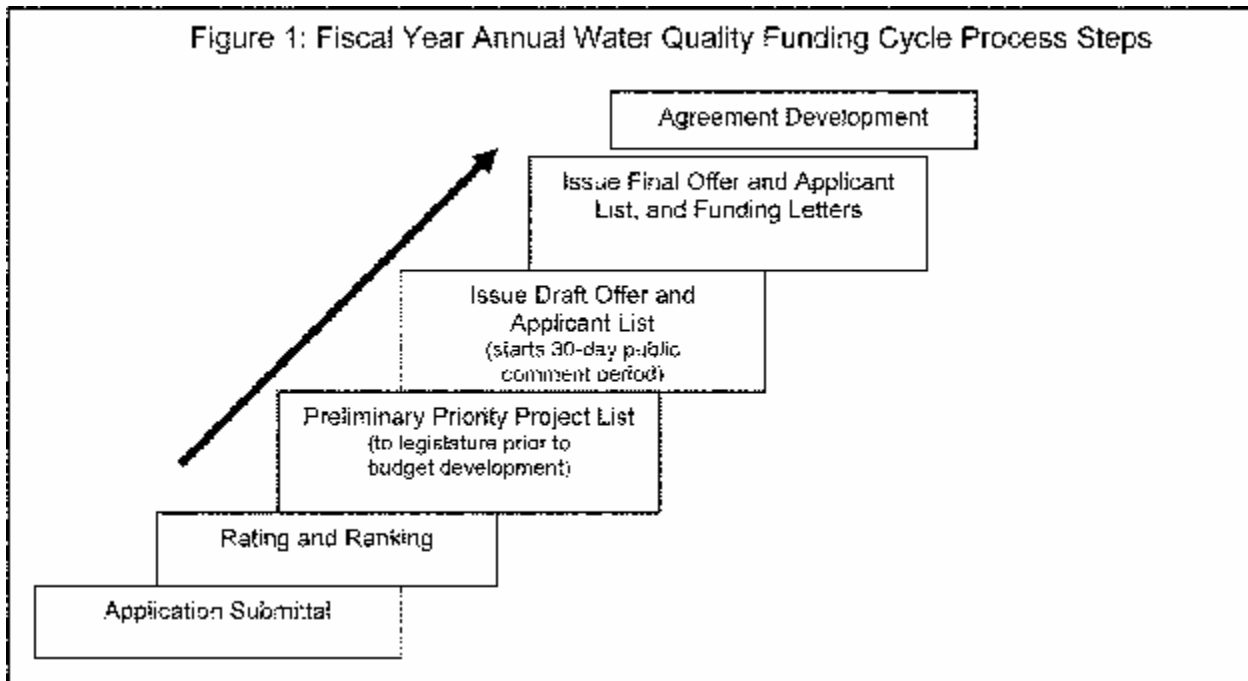
(2) The applicant may be asked to provide the following project information:

- (a) Basic information such as names of contacts, addresses, and other tracking information;
- (b) Project summary;
- (c) Project goals, objectives, and milestones;
- (d) Overall water quality benefits;
- (e) Public health benefits;
- (f) Sources of pollution addressed;
- (g) How the project will address state and federal mandates, elements in "Washington's water quality plan to control nonpoint sources of pollution," or other such plans;
- (h) Performance measures and postproject assessment monitoring;
- (i) Readiness to proceed, likelihood of success, and measures of success specific to the project;
- (j) Local initiatives, commitments, or priorities related to the project; or
- (k) Other information requested by the department.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-200, filed 6/29/07, effective 7/30/07.]

WAC 173-98-210 Ecology's responsibilities. (1) A general funding cycle schedule is provided in figure 1.

Figure 1: Fiscal Year Annual Water Quality Funding Cycle Process Steps



(2) Ecology will provide the following services:

(a) Make available the application and applicable guidelines before the associated funding cycle begins;

(b) Conduct at least one application workshop in each of ecology's four regions;

(c) Conduct preapplication workshops to discuss regional level priorities if applicable;

(d) After the application deadline, complete an initial review of project proposals for funding eligibility;

(e) Request other agencies to provide evaluation assistance as needed;

(f) Rate and rank the applications using a consistent scoring system;

(g) Prepare a combined preliminary project priority list, after evaluation and scoring of all applications;

(h) Submit preliminary project priority list to the state legislature for budget consideration;

(i) Develop a combined draft offer and applicant list and a draft revolving fund IUP;

(j) Facilitate a public review and comment period for the combined draft offer and applicant list and revolving fund IUP;

(k) Sponsor at least one public meeting to explain the combined draft offer and applicant list and the revolving fund IUP;

(l) Develop a combined "final offer and applicant list" and a final revolving fund IUP. Public comments collected during draft public review period will be incorporated and result in a responsiveness summary;

(m) Issue funding decision letters to all applicants; and

(n) Negotiate, develop, and finalize loan agreements.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-210, filed 6/29/07, effective 7/30/07.]

WAC 173-98-220 Final offer and applicant list. Loan offers identified on the "final offer and applicant list" will be effective for up to one year from the publication date of the "final offer and applicant list." Loan offers that do not result in a signed agreement are automatically terminated.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-220, filed 6/29/07, effective 7/30/07.]

WAC 173-98-230 Revolving fund intended use plan (IUP). (1) As required by the EPA, the department issues an IUP for each funding cycle.

(2) The IUP is issued in conjunction with the "final offer and applicant list."

(3) It contains a detailed report of how the department expects to allocate moneys available in the current funding cycle.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-230, filed 6/29/07, effective 7/30/07.]

PART 3 FINANCIAL HARDSHIP ASSISTANCE

WAC 173-98-300 Wastewater treatment facilities construction.

(1) There are three primary factors considered in determining hardship funding for the construction portion of wastewater treatment facilities projects:

- (a) Service area population;
- (b) Existing residential need at the time of application; and
- (c) Level of financial burden placed on the ratepayers.

(2) **Service area population.** Applicants with a service area population of twenty-five thousand or less can request hardship-funding consideration by submitting a financial hardship analysis form along with the funding application. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) **Existing residential need.** The applicant and the department calculate the water pollution control facilities construction costs that are associated with existing residential need at the time of application.

(4) **Level of financial burden.**

(a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percent of the median household income (MHI). The residential sewer user fee is calculated using the construction cost estimates including:

- (i) Estimated construction cost;
- (ii) Existing annual operation and maintenance costs;
- (iii) Discounted, existing annual operation and maintenance costs as a result of constructing the project;
- (iv) Projected future annual operation and maintenance costs for the total facility;
- (v) The applicant's current and future annual debt service on the project;
- (vi) The revolving fund annual debt service for the funded project;
- (vii) Other grants;
- (viii) The applicant's level of debt for other wastewater facilities not associated with the project;
- (ix) The total number of households existing at the time of application that will be served by the project;
- (x) The nonresidential share of the total annual costs is deducted; and
- (xi) Median household income;

(b) The sewer user fee as a percentage of MHI is the basis for the department's loan hardship-funding continuum shown in figure 2;

(c) The most recent available census data determines the median household income. This data is updated yearly based on inflation rates as measured by the federal Bureau of Labor Statistics and published as the *Consumer Price Index*; and

(d) If median household income data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the median household income.

(5) **Loan terms and interest rates.** The department uses the loan hardship-funding continuum to determine the hardship-loan interest rates. Not more than fifty percent of the funding category can be awarded to any one applicant per funding cycle. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply. When an applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may be eligible for a twenty-year repayment term and a one percent interest rate. This interest rate represents twenty percent of the average market rate for tax-exempt municipal bonds (see figure 2).

(6) **Figure 2. Loan Hardship-Funding Continuum**

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but below 5.0%	5.0% and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI))
Loan Hardship-Funding Continuum	Loan at 60% of market rate	Loan at 40% of market rate	Loan at 20% of market rate	Loan at 0% interest

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-300, filed 6/29/07, effective 7/30/07.]

WAC 173-98-310 On-site septic system repair and replacement programs. (1) Applicants may apply for a revolving fund loan to establish or continue programs that provide funding for on-site septic repair and replacement for homeowners and small commercial enterprises.

(2) **Final loan blended interest rate.** The department may adjust the recipient's interest rates based on the interest rates that the recipient charged to homeowners and small commercial enterprises. To receive the adjusted interest rate, the recipient must issue loans shown in figure 3.

(3) Figure 3 shows the interest rate schedule for loans targeted to homeowners at three levels of county median household income. For information on how the market rate is determined, see WAC 173-98-400.

Figure 3.

Homeowner Income is:	20-Year Term	5-Year Term	Hardship Level
Above 80% county MHI	60% of MR	30% of MR	Nonhardship
50 - 80% county MHI	30% of MR	Up to 15% of MR	Moderate
Below 50% county MHI	Up to 15% of MR	0%	Severe

Figure 4.

Figure 4 shows the interest rate schedules for loans targeted to small commercial enterprises at three levels of annual gross revenue. For example, in order for a small commercial enterprise to be considered for moderate to severe hardship, the business must provide documentation to substantiate that annual gross revenue is less than one hundred thousand dollars.

Small Commercial Enterprise Annual Gross Revenue is:	20-Year Term	5-Year Term	Hardship Level
Above \$100,000	60% of MR	30% of MR	Nonhardship
\$50,000 - \$100,000	30% of MR	Up to 15% of MR	Moderate
Below \$50,000	Up to 15% of MR	0%	Severe

(4) The recipient agrees to submit a final compilation of the local loans provided to homeowners and small commercial enterprises throughout the duration of the project. The list will include information provided by the RECIPIENT regarding the number and final dollar amounts of loans funded in the following respective homeowner income and small commercial enterprise revenue levels:

- (a) Homeowner income:

- (i) Above 80% of county MHI
- (ii) 50 to 80% of county MHI
- (iii) Below 50% of county MHI
- (b) Small commercial enterprise annual gross revenue:
 - (i) Above \$100,000
 - (ii) \$50,000 to \$100,000
 - (iii) Below \$50,000

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-310, filed 6/29/07, effective 7/30/07.]

WAC 173-98-320 Storm water projects. (1) There are three primary factors in determining financial hardship for storm water projects:

- (a) Service area population;
- (b) Presence of a permit; and
- (c) Community's median household income (MHI).

(2) **Service area population, presence of permit, and median household income.** Applicants under a permit, with a service area population of twenty-five thousand or less, and whose MHI is sixty percent or less of the average statewide MHI can request hardship-funding consideration. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) If MHI data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the MHI.

(4) Figure 5 describes the interest rate schedule. For information on how the market rate is determined, see WAC 173-98-400. Figure 5.

Service area MHI is:	20-Year Term	5-Year Term
Above 60% statewide MHI	Not eligible	Not eligible
60% or below statewide MHI	Up to 30% of MR	Up to 15% of MR

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-320, filed 6/29/07, effective 7/30/07.]

**PART 4
LOAN TERMS**

WAC 173-98-400 Loan interest rates. (1) Interest will accrue on each disbursement as it is paid to the recipient.

(2) The department bases loan interest rates on the average market interest rate. The average market interest rate is:

(a) Based on the daily market rate published in the bond buyer's index for tax-exempt municipal bonds; and

(b) Taken from the period sixty to thirty days before the annual funding application cycle begins.

(3) See WAC 173-98-300 or 173-98-3010 for hardship interest rates.

Figure 6: Loan Terms and Interest Rates

Repayment Period	Interest Rate
Up to 5 years:	30% of the average market rate.
More than 5 but no more than 20 years:	60% of the average market rate.

(4) The director may approve lower interest rates for the annual funding application cycle if a financial analysis of the revolving fund demonstrates that lower interest rates for that year are not detrimental to the perpetuity of the revolving fund.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-400, filed 6/29/07, effective 7/30/07.]

WAC 173-98-410 Refinancing. (1) There are two kinds of refinance with different regulations: Standard refinance and interim refinance.

(2) **Standard refinance** refers to a completed project funded with moneys from a source other than the department. It is limited to water pollution control facilities where project construction began after March 7, 1985.

(a) Applicants requesting standard refinancing must meet all the requirements contained in the act;

(b) Standard refinance projects will only be funded if there is limited demand for moneys for new projects;

(c) All department prerequisites must have been met at the time the project was undertaken;

(d) If multiple standard refinance applications are received, priority will be given based on impacts to the rate payers in the service area of the project;

(e) Standard refinance projects are not eligible for hardship financial assistance; and

(f) Repayment begins six months after a funding agreement becomes effective.

(3) **Interim refinance** applies to a project that is in progress using moneys from a source other than the department. Interim refinance retires existing debt and also covers the remaining eligible project costs. Interim refinance projects must meet all applicable requirements of this chapter.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-410, filed 6/29/07, effective 7/30/07.]

WAC 173-98-420 Defeasance. (1) No defeasance is allowed as long as the department holds the loan.

(2) Defeasance means setting money aside in a special account that is dedicated to pay all or some of the principal and interest on a debt when it comes due.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-420, filed 6/29/07, effective 7/30/07.]

WAC 173-98-430 Repayment. When a project is complete and all disbursements are made the department will execute a final amendment that will include:

(1) A final loan repayment schedule that reflects the length of repayment terms and the principal from disbursements and accrued interest;

(2) The first repayment of principal and interest will be due one year after the initiation of operation date, or one year after the project completion date, whichever occurs first;

(3) Equal payments will be due every six months;

(4) If the due date for any payment falls on a Saturday, Sunday, or designated holiday for Washington state agencies, the payment shall be due on the next business day for Washington state agencies;

(5) Loan balances may be repaid or additional principal payments may be made at any time without penalty; and

(6) The department may assess a late fee for delinquent payments, according to WAC 173-98-470.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-430, filed 6/29/07, effective 7/30/07.]

WAC 173-98-440 Loan security. Loans shall be secured by a general obligation pledge or a revenue pledge of the recipient. The obligation of the recipient to make loan repayments from the sources identified in its revolving fund loan agreement shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, or abatement of any kind.

(1) **General obligation.** Repayment of the loan may be secured by a general obligation pledge. The recipient shall pledge to include

in its budget an amount sufficient to pay the principal and interest on the loan when due. For so long as the loan is outstanding, the recipient shall ensure adequate funds are available to enable timely loan repayment, which may require the recipient to levy additional annual taxes against the taxable property within its boundaries. The full faith, credit, and resources of the recipient shall be pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of the principal of and interest on the loan.

(2) **Revenue obligation.** Repayment of a loan may be secured by an irrevocable pledge of the net revenues of the recipient's utility and, in appropriate cases, utility local improvement district assessments.

Repayment of a loan shall constitute a lien and charge upon the net revenues of the recipient's utility prior and superior to any other charges whatsoever, except that the lien and charge shall be junior and subordinate to the lien and charge of any senior lien obligations. If applicable, repayment of a loan shall constitute a lien and charge upon utility local improvement district assessments prior and superior to any other charges whatsoever.

(3) **Tribal governmental enterprises.** Federally recognized Indian tribes may provide loan security through dedicated revenue from governmental enterprises. The recipient must demonstrate that the security used has a sufficient track record of income to secure the loan. Tribal governmental enterprises may include leases, gaming as provided under approved gaming compacts, forestry, or other tribal government-owned enterprises.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-440, filed 6/29/07, effective 7/30/07.]

WAC 173-98-450 Loan reserve requirements. For a revenue obligation secured loan with terms greater than five years, the recipient must accumulate a reserve account equivalent to the annual debt service on the loan. This reserve must be established before or during the first five years of the loan repayment period. The reserve account may be used to make the last two payments on the revolving fund loan.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-450, filed 6/29/07, effective 7/30/07.]

WAC 173-98-460 Loan default. In the event of loan default, the state of Washington may withhold any amounts due to the recipient from the state for other purposes. Such moneys will be applied to the debt.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-460, filed 6/29/07, effective 7/30/07.]

WAC 173-98-470 Late payments. A late fee of one percent per month on the past due amount will be assessed starting on the date the debt becomes past due and until it is paid in full.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-470, filed 6/29/07, effective 7/30/07.]

PART 5
WATER POLLUTION CONTROL REVOLVING FUND REQUIREMENTS FOR
MANAGING LOANS

WAC 173-98-500 Funding categories. (1) The revolving fund is split into two funding categories:

(a) Water pollution control facilities category: Eighty percent of the revolving fund is used for facilities projects as established under section 212 of the act; and

(b) Water pollution control activities category: Twenty percent of the revolving fund will be available for the implementation of programs or projects established under the "Washington's water quality management plan to control nonpoint sources of pollution."

(2) If the demand is limited in either funding category, the department can shift moneys between the funding categories.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-500, filed 6/29/07, effective 7/30/07.]

WAC 173-98-510 Funding recognition. (1) Where applicable, the recipient must acknowledge department and EPA funding in reports, technical documents, publications, brochures, and other materials.

(2) Where applicable, the recipient must display signs for site-specific projects acknowledging department and EPA funding. The sign must be large enough to be seen from nearby roadways and include a department or EPA logo.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-510, filed 6/29/07, effective 7/30/07.]

WAC 173-98-520 Ceiling amounts. (1) Water pollution control facilities category:

(a) Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle; and

(b) No more than five million dollars is available for each smaller combined design-construct project (step four). See WAC 173-98-530 for information on smaller combined design-construct projects (step four).

(2) Water pollution control activities category: Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

(3) Partially funded projects: If a project is offered partial funding due to the lack of available revolving fund moneys, and the recipient is demonstrating progress on the project, the recipient may apply for the remaining eligible project costs in the subsequent funding cycle.

(4) Water pollution control facilities construction bid overruns:

(a) If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's original estimate;

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding bid overruns will be given to hardship communities based on the severity of financial need.

(5) Water pollution control facilities construction change orders:

(a) The department may approve funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s);

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding change orders will be given to hardship communities based on the severity of financial need.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-520, filed 6/29/07, effective 7/30/07.]

WAC 173-98-530 Step process for water pollution control facilities. (1) The step process is required for facilities projects. The process begins with site-specific planning, and continues through design to construction.

(2) For steps one through three, an applicant may only apply for funding for one step of the process at a time. At the time of application, completion of the previous steps must be approved by the department. Funding of one step does not guarantee the funding of subsequent steps.

(3) The step process includes the following:

(a) **Planning (step one):** Step one involves the preparation of a site-specific facilities plan that identifies the cost-effective alternatives for addressing a water pollution control problem. There is no prerequisite for planning. If there is an existing engineering report, it must be upgraded to a facilities plan;

(b) **Design (step two):** Step two includes the preparation of plans and specifications for use in construction. These must be based on the preferred cost-effective alternative identified in the facilities plan. A facilities plan must be approved by the department before an application for design can be considered for funding.

Facilities plans approved by the department more than two years prior to the close of the application period must contain evidence of

recent review by the department to ensure the document reflects current conditions; and

(c) **Construction (step three):** Step three includes the actual building of facilities based on the approved design. Design must be approved by the department before an application for construction can be considered for funding.

(4) **Combined steps for smaller design-construct projects (step four):** In some cases, design and construction may be combined into one loan. Step four applicants must demonstrate that step two (design) can be completed and approved by the department within one year of the effective date of the funding agreement. The total project costs for step four projects must be five million dollars or less.

(5) **Step deviations.** During the application phase of the funding cycle, the department may allow an applicant to deviate from the traditional step requirements if:

(a) The Washington state department of health has declared a public health emergency; and

(b) The proposed project would remedy this situation.

No loan agreement will be signed until all previous steps have been completed and approved by the department.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-530, filed 6/29/07, effective 7/30/07.]

WAC 173-98-540 Step process for water pollution control activities. The step process is required for lake projects and recommended for all activities projects.

(1) **Planning** involves the identification of problems and evaluation of cost-effective alternatives.

(2) **Implementation** is the actual implementation of the project based on the planning document. Where the project includes construction, a design element may be included before the implementation step.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-540, filed 6/29/07, effective 7/30/07.]

WAC 173-98-550 Declaration of construction after project completion. Recipients shall submit a declaration of construction of water pollution control facilities to the department within thirty days of project completion.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-550, filed 6/29/07, effective 7/30/07.]

WAC 173-98-560 Performance measures and postproject assessment.

(1) The department may require a recipient to develop and implement a postproject assessment plan.

(2) A recipient may be required to participate in a postproject survey and interview regarding performance measures.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-560, filed 6/29/07, effective 7/30/07.]

**PART 6
DESIGN-BUILD AND DESIGN-BUILD-OPERATE PROJECTS**

WAC 173-98-600 Design-build and design-build-operate project requirements. (1) Design-build or design-build-operate projects must be consistent with applicable statutes, such as chapter 39.10 RCW, Alternative public works contracting procedures, chapter 70.150 RCW, Water Quality Joint Development Act, and/or chapter 35.58 RCW, Metropolitan municipal corporations.

(2) The design and construction portions of a design-build-operate project under chapter 70.150 RCW, Water Quality Joint Development Act, may be eligible for reduced interest rate if the public body can demonstrate financial hardship in accordance with WAC 173-98-300.

(3) The following conditions apply to design-build and design-build-operate projects:

(a) The ceiling amounts in WAC 173-98-520;

(b) If eligible project costs exceed the ceiling amounts in WAC 173-98-520, then public bodies can compete for additional funding in the subsequent funding cycle;

(c) Interest rates for nonhardship projects are set according to WAC 173-98-400;

(d) In the case of hardship, a reduced interest rate may be available for the design and construction portion of a design-build-operate project;

(e) The project scope of work must implement a department-approved facilities plan;

(f) In addition to the project application information listed in WAC 173-98-200, the project will be evaluated on the applicant's level of administrative and technical expertise;

(g) Applicants may apply for up to one hundred ten percent of the facilities planning estimate for design and construction. The loan agreement will be written for the final negotiated contract price;

(h) At the time of application, the following must be provided:

(i) A legal opinion from an attorney of the public body indicating that the public body has sufficient legal authority to utilize the process;

(ii) A department-approved facilities plan;

(iii) A report detailing the projected savings based on a cost and time-to-complete as compared to the traditional design-bid-construct process;

(i) The department may require that the public body obtain delegation authority consistent with chapter 90.48 RCW, Water pollution control, and assume the responsibility for sequential review and approval of plans, specifications, and change orders. The department will continue to make all eligibility determinations;

(j) Costs associated with change orders are not eligible for reimbursement;

(k) Before delegation authority is granted to the applicant and the loan agreement is signed, the following must be approved by the department:

(i) Primary design elements;

(ii) Final service agreements and/or contracts;

(l) Projects funded prior to the effective date of this rule will continue to be managed in accordance with the program guidelines for the year the project was funded;

(m) Projects must be completed according to the timeline in WAC 173-98-800 and 173-98-810; and

(n) Projects funded under the alternative contracting service agreement AC/SA pilot rule of 2002 are placed at the top of the "final offer and applicant list" and IUP each year in relative priority to other AC/SA projects. Loan moneys may be disbursed in equal annual payments or by other means that are not detrimental to the perpetuity of the revolving fund.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-600, filed 6/29/07, effective 7/30/07.]

PART 7 COMPLIANCE WITH OTHER LAWS, RULES, AND REQUIREMENTS

WAC 173-98-700 General requirements. (1) Recipients must fully comply with all applicable federal, state, and local laws and regulations relating to topics such as procurement, discrimination, labor, job safety, drug-free environments, and minority and women owned businesses.

(2) Ongoing management of most aspects of loan projects is subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*.

(3) Ongoing management of all aspects of loan projects is subject to the associated funding program guidelines.

(4) The applicant shall secure all necessary permits required by authorities having jurisdiction over the project. Copies must be available to the department upon request.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-700, filed 6/29/07, effective 7/30/07.]

WAC 173-98-710 The Growth Management Act. (1) A local government not in compliance with the Growth Management Act may not receive loans or grants from the department, except, in limited

circumstances, where a local government must address a public health need or substantial environmental degradation.

(2) For the purposes of this section, "compliance with the Growth Management Act" means: A county, city, or town that is required to or chooses to plan under RCW 36.70A.040 has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by chapter 36.70A RCW.

(3) For the purposes of this chapter, a public health need related to a loan must be documented by a letter signed by the secretary of the Washington state department of health or his or her designee and addressed to the public official who signed the loan application. "Public health need" means a situation where:

(a) There is a documented potential for:

(i) Contaminating a source of drinking water; or

(ii) Failure of existing wastewater system or systems resulting in contamination being present on the surface of the ground in such quantities and locations as to create a potential for public contact; or

(iii) Contamination of a commercial or recreational shellfish bed as to create a critical public health risk associated with consumption of the shellfish; or

(iv) Contamination of surface water so as to create a critical public health risk associated with recreational use; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(4) For the purposes of this chapter, a substantial environmental degradation related to a loan must be documented by a letter signed by the director and addressed to the public official who signed the loan application. "Substantial environmental degradation" means that:

(a) There is a situation causing real, documented, critical environmental contamination that:

(i) Contributes to violations of the state's water quality standards; or

(ii) Interferes with beneficial uses of the waters of the state;

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(5) A county, city, or town that has been offered a loan for a water pollution control facilities project may not receive loan funds while the county, city, or town is not in compliance with the Growth Management Act unless:

(a) Documentation showing that a public health need has been provided by the Washington state department of health; or

documentation showing that a substantial environmental degradation exists has been provided by the department;

(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address the public health need or substantial environmental degradation; and

(c) The department has determined that the project is designed to address only the public health need or substantial environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-710, filed 6/29/07, effective 7/30/07.]

WAC 173-98-720 State environmental review process (SERP). (1)

All recipients must comply with the SERP.

(2) SERP includes all the provisions of the State Environmental Policy Act (SEPA), chapter 43.21C RCW, and the SEPA rules, chapter 197-11 WAC, and applicable federal requirements.

(3) All mitigation measures committed to in documents developed in the SERP process, such as the environmental checklist, environmental report, SEPA environmental impact statement (EIS), the finding of no significant impact/environmental assessment, or record of decision/federal EIS will become revolving fund loan agreement conditions. Failure to abide by these conditions will result in withholding of payments and may result in immediate repayment of the loan.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-720, filed 6/29/07, effective 7/30/07.]

WAC 173-98-730 Cost-effectiveness analysis for water pollution control facilities. (1) Funding will only be considered if the project is shown to be the cost-effective alternative/solution to the water pollution control problem. The cost-effective alternative is determined using a cost-effectiveness analysis.

(2) A cost-effectiveness analysis must be included in the facilities plan and must include the following:

(a) A comparison of the total cost, total present worth or annual equivalent costs of alternatives considered for the planning period;

(b) The no action alternative; and

(c) A consideration of the monetary or nonmonetary costs/benefits of each alternative, such as the environmental impact, energy impacts, growth impacts, and community priorities.

(3) Facilities plans proposing design-build or design-build-operate projects must demonstrate that this approach is the cost-effective alternative for procurement.

PART 8
TIMELY USE OF REVOLVING FUND LOAN MONEYS

WAC 173-98-800 Starting a project. Costs incurred before a loan agreement is effective are not eligible for reimbursement, unless prior authorization is granted by the department or interim refinancing is approved. For more information on interim refinancing, see WAC 173-98-410.

(1) **Prior authorization to incur eligible costs.**

(a) An applicant may request prior authorization to incur eligible project costs if the following applies:

(i) The project is identified on the IUP;

(ii) Costs are incurred between the publication date of the "final offer and applicant" list and when the funding agreement is signed by the water quality program manager or other schedules set in the prior authorization letter; and

(iii) The written request is made to the water quality program manager;

(b) The water quality program manager will send the applicant a letter approving or denying the prior authorization; and

(c) Any project costs incurred prior to the publication date of the "final offer and applicant list" are not eligible for reimbursement. All costs incurred before the agreement is signed by the water quality program manager are at the applicant's own risk.

(2) **Project initiation.** Loan moneys must be spent in a timely fashion. The recipient must consistently meet the performance measures agreed to in the loan agreement. These performance measures include, but are not limited to, the following:

(a) Work on a project must be started within sixteen months of the publication date of the "final offer and applicant list" on which the project was proposed.

(b) Starting a project means making any measurable step toward achieving the milestones, objectives, and overall goals of the project.

(c) Loan offers identified on the "final offer and applicant list" will be effective for up to one year from the publication date of the "final offer and applicant list." Local offers that do not result in a signed agreement are automatically terminated, see WAC 173-98-220 Final offer and applicant list.

(3) **Project initiation extension.** Certain circumstances may allow a time extension of no more than twelve months for starting a project. For example:

(a) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(b) There is a need to do work during an environmental window in a specific season of the year; or

(c) Other reasons as identified by the department on a case-by-case basis.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-800, filed 6/29/07, effective 7/30/07.]

WAC 173-98-810 Finishing a project. Costs incurred after the project completion or expiration dates are not eligible for reimbursement.

(1) **Project completion.**

(a) Work on a project must be completed within five years of the publication date of the "final offer and applicant list" on which the project was proposed. A shorter time period may be specified in the loan agreement; and

(b) Completing a project means completing all milestones and objectives associated with the goals of the loan agreement.

(2) **Project completion extension.**

(a) After the five-year limit is reached, a time extension of no more than twelve months may be made under certain circumstances, including but not limited to:

(i) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(ii) There is a need to do work during an environmental window in a specific season of the year; and

(b) To ensure timely processing, the time extension request must be made prior to the completion or expiration date of the loan agreement.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-810, filed 6/29/07, effective 7/30/07.]

PART 9 ADMINISTRATIVE PROVISIONS

WAC 173-98-900 Water pollution control revolving fund (revolving fund) perpetuity. (1) The act requires that the revolving fund be managed in perpetuity.

(2) The department will strive to achieve perpetuity, as defined by WAC 173-98-030, by 2016.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-900, filed 6/29/07, effective 7/30/07.]

WAC 173-98-910 Accounting requirements for loan recipients.

(1) Recipients must maintain accounting records in accordance with RCW 43.09.200 Local government accounting--Uniform system of accounting.

(2) Accounting irregularities may result in a payment hold until irregularities are resolved. The director may require immediate repayment of misused loan moneys.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-910, filed 6/29/07, effective 7/30/07.]

WAC 173-98-920 Appealing a department decision. If a dispute arises concerning eligibility decisions made by the department within the context of a loan agreement, the decision may be appealed. A lawsuit cannot be brought to superior court unless the aggrieved party follows these procedures, which are intended to encourage the informal resolution of disputes consistent with RCW 34.05.060.

(1) First, the recipient may seek review of the financial assistance program's initial decision within thirty days of the decision in writing to the water quality program manager. The program manager will consider the appeal information and may choose to discuss the matter by telephone or in person;

(2) The program manager will issue a written decision within thirty days from the time the appeal is received;

(3) If the recipient is not satisfied with the program manager's decision, the recipient has thirty days to submit a written request to the deputy director for a review of the decision;

(4) The deputy director will consider the appeal information, and may choose to discuss the matter by telephone or in person. The deputy director will issue a written decision within thirty days from the time the appeal is received. The deputy director's decision will be the final decision of the department;

(5) If the recipient is not satisfied with the deputy director's final decision, the recipient may appeal to the Thurston County superior court, pursuant to RCW 34.05.570(4), which pertains to the review of "other agency action"; and

(6) Unless all parties to such appeal agree that a different time frame is appropriate, the parties shall attempt to bring the matter for a superior court determination within four months of the date in which the administrative record is filed with the court. This time frame is to ensure minimal disruptions to the program.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-920, filed 6/29/07, effective 7/30/07.]

WAC 173-98-930 Audit requirements for loan recipients. The department, or at the department's discretion, another authorized auditor may audit the revolving fund loan agreement and records.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-930, filed 6/29/07, effective 7/30/07.]

WAC 173-98-940 Insurance for water pollution control facilities projects. Recipients shall maintain comprehensive insurance coverage on the project for an amount equal to the moneys disbursed.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-940, filed 6/29/07, effective 7/30/07.]

WAC 173-98-950 Indemnification. To the extent that the Constitution and laws of the state of Washington permit, the recipient shall indemnify and hold the department harmless from and against any liability for any or all injuries to persons or property arising out of a project funded with a revolving fund loan except for such damage, claim, or liability resulting from the negligence or omission of the department.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-950, filed 6/29/07, effective 7/30/07.]

WAC 173-98-960 Sale of facilities to private enterprises. Recipients may sell facilities financed with the revolving fund to private enterprises. However, the revolving fund loan agreement must be terminated and the revolving fund loan must be repaid immediately upon the sale of that facility.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-960, filed 6/29/07, effective 7/30/07.]

WAC 173-98-970 Self-certification. (1) The department may authorize a recipient to certify compliance with selected program requirements. The recipient must:

- (a) Request certification authority;
- (b) Document that it has the capability and resources;
- (c) Document that it is in the best interest of the state; and
- (d) Demonstrate that the request is consistent with state and federal laws and regulations.

(2) Concurrences required in the environmental review process cannot be delegated to recipients.

[Statutory Authority: RCW 90.48.035. 07-14-096 (Order 05-16), § 173-98-970, filed 6/29/07, effective 7/30/07.]

Federal Clean Water Act of 1987, Section 319

CITE 33 USC Sec. 1329 01/24/94

EXPCITE TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 26 - WATER POLLUTION PREVENTION AND CONTROL
SUBCHAPTER III - STANDARDS AND ENFORCEMENT

HEAD Sec. 1329. Nonpoint source management programs

STATUTE

- a. State assessment reports
 1. Contents - The Governor of each State shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval, a report which -
 - A. identifies those navigable waters within the State which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this chapter;
 - B. identifies those categories and subcategories of nonpoint sources or, where appropriate, particular nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;
 - C. describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source; and
 - D. identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsections (h) and (i) of this section.
 2. Information used in preparation - In developing the report required by this section, the State (A) may rely upon information developed pursuant to sections 1288, 1313(e), 1314(f), 1315(b), and 1324 of this title, and other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to sections 1288(b) and 1313 of this title, to the extent such elements are consistent with and fulfill the requirements of this section.
- b. State management programs
 1. In general - The Governor of each State, for that State or in combination with adjacent States,
 2. shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval a management program which such State proposes to implement in the first four fiscal years beginning after the date of submission of such management program for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters.
 2. Specific contents - Each management program proposed for implementation under this subsection shall include each of the following:

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- A. An identification of the best management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category, subcategory, or particular nonpoint source designated under paragraph (1)(B), taking into account the impact of the practice on ground water quality.
 - B. An identification of programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under subparagraph (A).
 - C. A schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the best management practices identified in subparagraph (A) by the categories, subcategories, or particular nonpoint sources designated under paragraph (1)(B). Such schedule shall provide for utilization of the best management practices at the earliest practicable date.
 - D. A certification of the attorney general of the State or States (or the chief attorney of any State water pollution control agency which has independent legal counsel) that the laws of the State or States, as the case may be, provide adequate authority to implement such management program or, if there is not such adequate authority, a list of such additional authorities as will be necessary to implement such management program. A schedule and commitment by the State or States to seek such additional authorities as expeditiously as practicable.
 - E. Sources of Federal and other assistance and funding (other than assistance provided under subsections (h) and (i) of this section) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.
 - F. An identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with the program prepared under this subsection; for the purposes of this subparagraph, identification shall not be limited to the assistance programs or development projects subject to Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.
3. Utilization of local and private experts - In developing and implementing a management program under this subsection, a State shall, to the maximum extent practicable, involve local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.
 4. Development on watershed basis - A state shall, to the maximum extent practicable, develop and implement a management program under this subsection on a watershed-by-watershed basis within such State.

Administrative provisions

1. Cooperation requirement - Any report required by subsection (a) of this section and any management program and report required by subsection (b) of this section shall be developed in cooperation with local, substate regional, and interstate entities which are actively planning for the implementation of nonpoint source pollution controls and have either been certified by the Administrator in accordance with section 1288 of this title, have worked jointly with the State on water quality management planning under section 1285(j) of this title, or have been

- designated by the State legislative body or Governor as water quality management planning agencies for their geographic areas.
2. Time period for submission of reports and management programs - Each report and management program shall be submitted to the Administrator during the 18-month period beginning on February 4, 1987.
- d. Approval or disapproval of reports and management programs
1. Deadline - Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or management program under this section (other than subsections (h), (i), and (k) of this section), the Administrator shall either approve or disapprove such report or management program, as the case may be. The Administrator may approve a portion of a management program under this subsection. If the Administrator does not disapprove a report, management program, or portion of a management program in such 180-day period, such report, management program, or portion shall be deemed approved for purposes of this section.
 2. Procedure for disapproval - If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Administrator determines that -
 - A. the proposed management program or any portion thereof does not meet the requirements of subsection (b)(2) of this section or is not likely to satisfy, in whole or in part, the goals and requirements of this chapter;
 - B. adequate authority does not exist, or adequate resources are not available, to implement such program or portion;
 - C. the schedule for implementing such program or portion is not sufficiently expeditious; or
 - D. the practices and measures proposed in such program or portion are not adequate to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources and to improve the quality of navigable waters in the State; the Administrator shall within 6 months of the receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional 3 months to submit its revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.
 3. Failure of State to submit report - If a Governor of a State does not submit the report required by subsection (a) of this section within the period specified by subsection (c)(2) of this section, the Administrator shall, within 30 months after February 4, 1987, prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a) of this section. Upon completion of the requirement of the preceding sentence and after notice and opportunity for comment, the Administrator shall report to Congress on his actions pursuant to this section.
- e. Local management programs; technical assistance - If a State fails to submit a management program under subsection (b) of this section or the Administrator does not approve such a management program, a local public agency or organization which has expertise in, and authority to, control water pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a management program which is described in subsection (b) of this section and can be approved pursuant to subsection (d) of this section. After development of such management program, such agency or organization shall submit such management program to the Administrator for approval. If the Administrator approves such management program, such agency or organization shall be eligible to receive financial assistance under subsection (h) of this section for implementation of such management program as if such agency or organization were a State for which a report submitted under

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- subsection (a) of this section and a management program submitted under subsection (b) of this section were approved under this section. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under subsection (h) of this section.
- f. Technical assistance for States - Upon request of a State, the Administrator may provide technical assistance to such State in developing a management program approved under subsection (b) of this section for those portions of the navigable waters requested by such State.
 - g. Interstate management conference
 1. Convening of conference; notification; purpose - If any portion of the navigable waters in any State which is implementing a management program approved under this section is not meeting applicable water quality standards or the goals and requirements of this chapter as a result, in whole or in part, of pollution from nonpoint sources in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute significant pollution resulting from nonpoint sources to such portion. If, on the basis of information available, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this chapter as a result, in whole or in part, of significant pollution from nonpoint sources in another State, the Administrator shall notify such States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification, whether or not the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop an agreement among such States to reduce the level of pollution in such portion resulting from nonpoint sources and to improve the water quality of such portion. Nothing in such agreement shall supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This subsection shall not apply to any pollution which is subject to the Colorado River Basin Salinity Control Act (43 U.S.C. 1571 et seq.). The requirement that the Administrator convene a management conference shall not be subject to the provisions of section 1365 of this title.
 2. State management program requirement - To the extent that the States reach agreement through such conference, the management programs of the States which are parties to such agreements and which contribute significant pollution to the navigable waters or portions thereof not meeting applicable water quality standards or goals and requirements of this chapter will be revised to reflect such agreement. Such management programs shall be consistent with Federal and State law.
 - h. Grant program
 1. Grants for implementation of management programs - Upon application of a State for which a report submitted under subsection (a) of this section and a management program submitted under subsection (b) of this section is approved under this section, the Administrator shall make grants, subject to such terms and conditions as the Administrator considers appropriate, under this subsection to such State for the purpose of assisting the State in implementing such management program. Funds reserved pursuant to section 1285(j)(5) of this title may be used to develop and implement such management program.
 2. Applications - An application for a grant under this subsection in any fiscal year shall be in such form and shall contain such other information as the Administrator may require, including an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant.
 3. Federal share - The Federal share of the cost of each management program implemented with Federal assistance under this subsection in any fiscal year shall not exceed 60 percent of the cost incurred by the State in implementing such management program and shall be made on condition that the non-Federal share is provided from non-Federal sources.

4. (4) Limitation on grant amounts - Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State.
5. Priority for effective mechanisms - For each fiscal year beginning after September 30, 1987, the Administrator may give priority in making grants under this subsection, and shall give consideration in determining the Federal share of any such grant, to States which have implemented or are proposing to implement management programs which will -
 - A. control particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;
 - B. implement innovative methods or practices for controlling nonpoint sources of pollution, including regulatory programs where the Administrator deems appropriate;
 - C. control interstate nonpoint source pollution problems; or
 - D. carry out ground water quality protection activities which the Administrator determines are part of a comprehensive nonpoint source pollution control program, including research, planning, ground water assessments, demonstration programs, enforcement, technical assistance, education, and training to protect ground water quality from nonpoint sources of pollution.
6. Availability for obligation - The funds granted to each State pursuant to this subsection in a fiscal year shall remain available for obligation by such State for the fiscal year for which appropriated. The amount of any such funds not obligated by the end of such fiscal year shall be available to the Administrator for granting to other States under this subsection in the next fiscal year.
7. Limitation on use of funds - States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.
8. Satisfactory progress - No grant may be made under this subsection in any fiscal year to a State which in the preceding fiscal year received a grant under this subsection unless the Administrator determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2) of this section.
9. Maintenance of effort - No grant may be made to a State under this subsection in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for controlling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding February 4, 1987.
10. Request for information - The Administrator may request such information, data, and reports as he considers necessary to make the determination of continuing eligibility for grants under this section. •
11. Reporting and other requirements - Each State shall report to the Administrator on an annual basis concerning (A) its progress in meeting the schedule of milestones submitted pursuant to subsection (b)(2)(C) of this section, and (B) to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality for those navigable waters or watersheds within the State which were identified pursuant to subsection (a)(1)(A) of this section resulting from implementation of the management program.
12. Limitation on administrative costs - For purposes of this subsection, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with a grant under this subsection shall not exceed in any fiscal year 10 percent of the amount of the grant in such year, except that costs of implementing

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enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.

- i. Grants for protecting groundwater quality
 1. Eligible applicants and activities - Upon application of a State for which a report submitted under subsection (a) of this section and a plan submitted under subsection (b) of this section is approved under this section, the Administrator shall make grants under this subsection to such State for the purpose of assisting such State in carrying out groundwater quality protection activities which the Administrator determines will advance the State toward implementation of a comprehensive nonpoint source pollution control program. Such activities shall include, but not be limited to, research, planning, groundwater assessments, demonstration programs, enforcement, technical assistance, education and training to protect the quality of groundwater and to prevent contamination of groundwater from nonpoint sources of pollution.
 2. Applications - An application for a grant under this subsection shall be in such form and shall contain such information as the Administrator may require.
 3. Federal share; maximum amount - The Federal share of the cost of assisting a State in carrying out groundwater protection activities in any fiscal year under this subsection shall be 50 percent of the costs incurred by the State in carrying out such activities, except that the maximum amount of Federal assistance which any State may receive under this subsection in any fiscal year shall not exceed \$150,000.
 4. (4) Report - The Administrator shall include in each report transmitted under subsection (m) of this section a report on the activities and programs implemented under this subsection during the preceding fiscal year.
- j. Authorization of appropriations - There is authorized to be appropriated to carry out subsections (h) and (i) of this section not to exceed \$70,000,000 for fiscal year 1988, \$100,000,000 per fiscal year for each of fiscal years 1989 and 1990, and \$130,000,000 for fiscal year 1991; except that for each of such fiscal years not to exceed \$7,500,000 may be made available to carry out subsection (i) of this section. Sums appropriated pursuant to this subsection shall remain available until expended.
- k. Consistency of other programs and projects with management programs - The Administrator shall transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (b)(2)(F) of this section for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program.
- l. Collection of information - The Administrator shall collect and make available, through publications and other appropriate means, information pertaining to management practices and implementation methods, including, but not limited to, (1) information concerning the costs and relative efficiencies of best management practices for reducing nonpoint source pollution; and (2) available data concerning the relationship between water quality and implementation of various management practices to control nonpoint sources of pollution.
- m. Reports of Administrator
 1. Annual reports - Not later than January 1, 1988, and each January 1 thereafter, the Administrator shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and

- the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of such waters.
2. Final report - Not later than January 1, 1990, the Administrator shall transmit to Congress a final report on the activities carried out under this section. Such report, at a minimum, shall -
 - A. describe the management programs being implemented by the States by types and amount of affected navigable waters, categories and subcategories of nonpoint sources, and types of best management practices being implemented;
 - B. describe the experiences of the States in adhering to schedules and implementing best management practices;
 - C. describe the amount and purpose of grants awarded pursuant to subsections (h) and (i) of this section;
 - D. identify, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the navigable waters;
 - E. indicate what further actions need to be taken to attain and maintain in those navigable waters (i) applicable water quality standards, and (ii) the goals and requirements of this chapter;
 - F. include recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources; and
 - G. identify the activities and programs of departments, agencies, and instrumentalities of the United States which are inconsistent with the management programs submitted by the States and recommend modifications so that such activities and programs are consistent with and assist the States in implementation of such management programs.
 - n. Set aside for administrative personnel - Not less than 5 percent of the funds appropriated pursuant to subsection (j) of this section for any fiscal year shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency at levels which are adequate to carry out this section in such year.

SOURCE

(June 30, 1948, ch. 758, title III, Sec. 319, as added Feb. 4, 1987, Pub. L. 100-4, title III, Sec. 316(a), 101 Stat. 52.)

REFTEXT

REFERENCES IN TEXT

Executive Order 12372, referred to in subsecs. (b)(2)(F) and (k), is Ex. Ord. No. 12372, July 14, 1982, 47 F.R. 30959, as amended, which is set out under section 6506 of Title 31, Money and Finance.

The Colorado River Basin Salinity Control Act, referred to in subsec. (g)(1), is Pub. L. 93-320, June 24, 1974, 88 Stat. 266, as amended, which is classified principally to chapter 32A (Sec. 1571 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1571 of Title 43 and Tables.

SECRET

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1268, 1270, 1281, 1285, 1314, 1330, 1377, 1381, 1383, 1386, 1414b of this title; title 16 sections 1455b, 3838c.

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Chapter 39.34 RCW, Interlocal Cooperation Act

Sections

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39.34.180	Criminal justice responsibilities -- Interlocal agreements.
39.34.900	Short title.
39.34.910	Severability -- 1967 c 239.
39.34.920	Effective date -- 1967 c 239.

RCW 39.34.010 Declaration of purpose. It is the purpose of this chapter to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities. [1967 c 239 § 1.]

RCW 39.34.020 Definitions. For the purposes of this chapter, the term "public agency" shall mean any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state.

The term "state" shall mean a state of the United States. [1985 c 33 § 1; 1979 c 36 § 1; 1977 ex.s. c 283 § 13; 1975 1st ex.s. c 115 § 1; 1973 c 34 § 1; 1971 c 33 § 1; 1969 c 88 § 1; 1969 c 40 § 1; 1967 c 239 § 3.]

RCW 39.34.030 Joint powers -- Agreements for joint or cooperative action, requisites, effect on responsibilities of component agencies -- Financing of joint projects. (1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly

with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this chapter upon a public agency.

(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this chapter: PROVIDED, That any such joint or cooperative action by public agencies which are educational service districts and/or school districts shall comply with the provisions of RCW 28A.320.080. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) Any such agreement shall specify the following:

(a) Its duration;

(b) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. Such entity may include a nonprofit corporation organized pursuant to chapter 24.03 or 24.06 RCW whose membership is limited solely to the participating public agencies or a partnership organized pursuant to chapter 25.04 RCW whose partners are limited solely to participating public agencies and the funds of any such corporation or partnership shall be subject to audit in the manner provided by law for the auditing of public funds;

(c) Its purpose or purposes;

(d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;

(e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(f) Any other necessary and proper matters.

(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items (a), (c), (d), (e) and (f) enumerated in subdivision (3) hereof, contain the following:

(a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented;

(b) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking. Any joint board is authorized to establish a special fund with a state, county, city, or district treasurer servicing an involved public agency designated "Operating fund of joint board".

(5) No agreement made pursuant to this chapter shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, the performance may be offered in satisfaction of the obligation or responsibility.

(6) Financing of joint projects by agreement shall be as provided by law. [1992 c 161 § 4; 1990 c 33 § 568; 1981 c 308 § 2; 1972 ex.s. c 81 § 1; 1967 c 239 § 4.]

RCW 39.34.040 Agreements to be filed -- Status of interstate agreements -- Real party in interest -- Actions. Prior to its entry into force, an agreement made pursuant to this chapter shall be filed with the county auditor. In the event that an agreement entered into pursuant to this chapter is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States the agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state. [1995 c 22 § 1; 1992 c 161 § 5; 1967 c 239 § 5.]

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RCW 39.34.050 Duty to submit agreement to jurisdictional state officer or agency. In the event that an agreement made pursuant to this chapter shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control. The agreement shall be approved or disapproved by the state officer or agency with regard to matters within his, her, or its jurisdiction within ninety days after receipt of the agreement. If a state officer or agency fails to act within the ninety-day time limit, the agreement shall be deemed approved by that state officer or agency. [1992 c 161 § 6; 1967 c 239 § 6.]

RCW 39.34.055 Public purchase agreements with public benefit nonprofit corporations. The office of state procurement within the department of general administration may enter into an agreement with a public benefit nonprofit corporation to allow the public benefit nonprofit corporation to participate in state contracts for purchases administered by the office of state procurement. Such agreement must comply with the requirements of RCW 39.34.030 through 39.34.050. For the purposes of this section "public benefit nonprofit corporation" means a public benefit nonprofit corporation as defined in RCW 24.03.005 that is receiving local, state, or federal funds either directly or through a public agency other than an Indian tribe or a political subdivision of another state. [1994 c 98 § 1.]

RCW 39.34.060 Participating agencies may appropriate funds and provide personnel, property, and services. Any public agency entering into an agreement pursuant to this chapter may appropriate funds and may sell, lease, give, or otherwise supply property, personnel, and services to the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking. [1992 c 161 § 7; 1967 c 239 § 7.]

RCW 39.34.070 Authority of joint boards to receive loans or grants. Any joint board created pursuant to the provisions of this chapter is hereby authorized to accept loans or grants of federal, state or private funds in order to accomplish the purposes of this chapter provided each of the participating public agencies is authorized by law to receive such funds. [1967 c 239 § 8.]

RCW 39.34.080 Contracts to perform governmental activities which each contracting agency is authorized to perform. Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: PROVIDED, That such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties. [1967 c 239 § 9.]

RCW 39.34.085 Agreements for operation of bus services. In addition to the other powers granted by chapter 39.34 RCW, one or more cities or towns or a county, or any combination thereof, may enter into agreements with each other or with a public transportation agency of a contiguous state, or contiguous Canadian province, to allow a city or such other transportation agency to operate bus service for the transportation of the general public within the territorial boundaries of such city and/or county or to allow such city and/or county to operate such bus service within the jurisdiction of such other public agency when no such existing bus certificate of public convenience and necessity has been authorized by the Washington utilities and transportation commission: PROVIDED, HOWEVER, That such transportation may extend beyond the territorial boundaries of either party to the agreement if the agreement so provides, and if such service is not in conflict with existing bus service authorized by the Washington utilities and transportation commission. The provisions of this section shall be cumulative and nonexclusive and shall not affect any other right granted by this chapter or any other provision of law. [1977 c 46 § 1; 1969 ex.s. c 139 § 1.]

RCW 39.34.090 Agencies' contracting authority regarding electricity, utilities' powers, preserved. Nothing in this chapter shall be construed to increase or decrease existing authority of any public agency of this state to enter into agreements or contracts with any other public agency of this state or of any other state or the

United States with regard to the generation, transmission, or distribution of electricity or the existing powers of any private or public utilities. [1967 c 239 § 10.]

RCW 39.34.100 Powers conferred by chapter are supplemental. The powers and authority conferred by this chapter shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of any public agency. [1967 c 239 § 11.]

RCW 39.34.110 Powers otherwise prohibited by Constitutions or federal laws. No power, privilege, or other authority shall be exercised under this chapter where prohibited by the state Constitution or the Constitution or laws of the federal government. [1967 c 239 § 12.]

RCW 39.34.130 Transactions between state agencies -- Charging of costs -- Regulation by director of financial management. Except as otherwise provided by law, the full costs of a state agency incurred in providing services or furnishing materials to or for another agency under chapter 39.34 RCW or any other statute shall be charged to the agency contracting for such services or materials and shall be repaid and credited to the fund or appropriation against which the expenditure originally was charged. Amounts representing a return of expenditures from an appropriation shall be considered as returned loans of services or of goods, supplies or other materials furnished, and may be expended as part of the original appropriation to which they belong without further or additional appropriation. Such interagency transactions shall be subject to regulation by the director of financial management, including but not limited to provisions for the determination of costs, prevention of interagency contract costs beyond those which are fully reimbursable, disclosure of reimbursements in the governor's budget and such other requirements and restrictions as will promote more economical and efficient operations of state agencies.

Except as otherwise provided by law, this section shall not apply to the furnishing of materials or services by one agency to another when other funds have been provided specifically for that purpose pursuant to law. [1979 c 151 § 45; 1969 ex.s. c 61 § 1.]

RCW 39.34.140 Transactions between state agencies -- Procedures for payments through transfers upon accounts. The director of financial management may establish procedures whereby some or all payments between state agencies may be made by transfers upon the accounts of the state treasurer in lieu of making such payments by warrant or check. Such procedures, when established, shall include provision for corresponding entries to be made in the accounts of the affected agencies. [1979 c 151 § 46; 1969 ex.s. c 61 § 2.]

RCW 39.34.150 Transactions between state agencies -- Advancements. State agencies are authorized to advance funds to defray charges for materials to be furnished or services to be rendered by other state agencies. Such advances shall be made only upon the approval of the director of financial management, or his order made pursuant to an appropriate regulation requiring advances in certain cases. An advance shall be made from the fund or appropriation available for the procuring of such services or materials, to the state agency which is to perform the services or furnish the materials, in an amount no greater than the estimated charges therefor. [1979 c 151 § 47; 1969 ex.s. c 61 § 3.]

RCW 39.34.160 Transactions between state agencies -- Time limitation for expenditure of advance -- Unexpended balance. An advance made under RCW 39.34.130 through 39.34.150 from appropriated funds shall be available for expenditure for no longer than the period of the appropriation from which it was made. When the actual costs of materials and services have been finally determined, and in no event later than the lapsing of the appropriation, any unexpended balance of the advance shall be returned to the agency for credit to the fund or account from which it was made. [1969 ex.s. c 61 § 4.]

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- *Chapter 39.34 RCW, Interlocal Cooperation Act*
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RCW 39.34.170 Transactions between state agencies -- Powers and authority cumulative. The powers and authority conferred by RCW 39.34.130 through 39.34.160 shall be construed as in addition and supplemental to powers or authority conferred by any other law, and not to limit any other powers or authority of any public agency expressly granted by any other statute. [1969 ex.s. c 61 § 5.]

RCW 39.34.180 Criminal justice responsibilities -- Interlocal agreements. (1) Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

(2) The following principles must be followed in negotiating interlocal agreements or contracts: Cities and counties must consider (a) anticipated costs of services; and (b) anticipated and potential revenues to fund the services, including fines and fees, criminal justice funding, and state-authorized sales tax funding levied for criminal justice purposes.

(3) If an agreement as to the levels of compensation within an interlocal agreement or contract for gross misdemeanor and misdemeanor services cannot be reached between a city and county, then either party may invoke binding arbitration on the compensation issued by notice to the other party. In the case of establishing initial compensation, the notice shall request arbitration within thirty days. In the case of nonrenewal of an existing contract or interlocal agreement, the notice must be given one hundred twenty days prior to the expiration of the existing contract or agreement and the existing contract or agreement remains in effect until a new agreement is reached or until an arbitration award on the matter of fees is made. The city and county each select one arbitrator, and the initial two arbitrators pick a third arbitrator.

(4) For cities or towns that have not adopted, in whole or in part, criminal code or ordinance provisions related to misdemeanor and gross misdemeanor crimes as defined by state law, this section shall have no application until July 1, 1998. [1996 c 308 § 1.]

RCW 39.34.910 Severability -- 1967 c 239. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 c 239 § 14.]