

AMENDATORY SECTION (Amending Order 00-10, filed 12/8/00, effective 1/8/01)

WAC 173-95A-010 (~~(What is the purpose of this chapter?)~~)

Purpose. (~~(The purpose of this chapter is to set forth limitations on the allocation and uses of moneys administered by the department of ecology from a special fund within the state treasury known as the water quality account, as authorized by chapter 70.146 RCW. This fund provides financial assistance, in the form of loans and grants to meet high priority water quality management needs, to public bodies throughout the state of Washington. Funded projects must address water quality problems related to public health and environmental degradation. In order to encourage the timely use of funds provided by the state legislature, priority will be given to projects shown to be ready to proceed.)~~) (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: 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.]

NEW SECTION

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.

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AMENDATORY SECTION (Amending Order 00-10, filed 12/8/00, effective 1/8/01)

WAC 173-95A-020 ((What are the definitions of key terms?))
Definitions. ((~~(1) "Activities" - see "water pollution control activity."~~)

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

~~(3) "Best management practices" means physical, structural, and/or managerial practices, approved by the department, that, when used singularly or in combination, prevent or reduce pollutant discharges.~~

~~(4) "Cash match" means funds to match the state share of a grant that are under the sole control of a public body.~~

~~(5) "Centennial" means the centennial clean water fund.~~

~~(6) "Ceiling amounts" means the largest amount of financial assistance the department can provide to an individual project. Ceiling amounts vary based on factors including the type of project and whether a loan or a grant is awarded.~~

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

~~(8) "Cost-effective alternative" means the alternative with the lowest present worth or equivalent annual value that achieves~~

~~the requirements of the facility and that recognizes environmental and other nonmonetary considerations.~~

~~(9) "Department" means the department of ecology.~~

~~(10) "Easement," for the purposes of this rule, means a written agreement between a public body and an individual landowner, that allows the public body to have access to the property at any time to inspect, maintain, or repair activities or facilities installed with a loan or a grant, or to hold occasional public tours of the site for educational purposes.~~

~~(11) "Eligible cost" means the portion of the cost of the facilities or activities project that can be financed under the provisions of this chapter.~~

~~(12) "Enforcement order" means an administrative order that is a document issued by the department under the authority of RCW 90.48.120 and that directs a public body to complete a specified course of action within an explicit period of time to achieve compliance with the provisions of chapter 90.48 RCW.~~

~~(13) "Engineering report" means a report that evaluates engineering and other alternatives that meet the requirements set forth in chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.~~

~~(14) "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.~~

~~(15) "Estimated construction cost" means the estimated sum of moneys, excluding sales tax, to be paid to construction contractors and suppliers for all labor, materials, equipment, and other related work necessary to construct the proposed project.~~

~~(16) "Existing needs" means water pollution control facilities capability for the existing population in order to meet the requirements of the water quality based effluent limitations in the recipient's National Pollution Discharge Elimination System or state waste discharge permit.~~

~~(17) "Existing residential need" means water pollution control facilities capability for the existing residential population in order to meet the water quality based effluent limitations in the recipient's National Pollution Discharge Elimination System or state waste discharge permit.~~

~~(18) "Excess capacity" means water pollution control facilities capability beyond what is needed for the existing residential population to meet the water quality based effluent limitations in the recipient's National Pollution Discharge Elimination System or state waste discharge permit.~~

~~(19) "Extended grant payments" means cash disbursements for eligible project costs made under a multiyear centennial grant agreement according to conditions established in RCW 70.146.075 and funded through legislative appropriations. Extended grant payments do not follow the normal process of reimbursement for actual costs incurred.~~

~~(20) "Facilities plan" means an engineering report that includes all the elements required by the National Environmental~~

~~Policy Act, other federal statutes, and planning requirements under chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.~~

~~(21) "Facilities" - see "water pollution control facilities."~~

~~(22) "Force account" means loan or grant project work performed using labor, materials, or equipment of a public body.~~

~~(23) "Funding cycle" means the annual cycle of activities related to allocating funds for a single fiscal year.~~

~~(24) "Funding cut-off line" means the position on a final offer list ranked by priority below which financial assistance will not be offered from that fund, proviso, or funding category.~~

~~(25) "Funding list" - see "offer list."~~

~~(26) "Grant agreement" means a contractual arrangement between a public body and the department that includes an approved scope of work, total project cost, set grant percentage, eligible costs, budget, and a schedule for project completion (in addition to other requirements).~~

~~(27) "Immediate corrective action" means that the director of the department or the director's designee has determined that the project must proceed to correct the problem in a timely manner before funds are available during the next regular funding cycle. This usually would involve a "public health emergency" or an "environmental emergency."~~

~~(28) "Indirect cost" means costs that benefit more than one activity of the recipient and that may not be directly assigned to a particular project objective.~~

~~(29) "Infiltration and inflow" means water, other than wastewater, that enters a sewer system.~~

~~(30) "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 from an existing sewer system.~~

~~(31) "In-kind contributions" means the value of noncash contributions provided by a public body or any other approved parties.~~

~~(32) "Interlocal costs" means the cost of goods or services provided to a project under the terms of an interlocal agreement by a public body eligible to apply for centennial funds. These costs may be considered as part of a cash match if they are eligible for funding under the grant agreement.~~

~~(33) "Loan agreement" means a contractual arrangement between a public body and the department that involves a disbursement of funds that must be repaid. The agreement includes an approved scope of work, total project cost, loan terms (including interest rates) and a repayment schedule.~~

~~(34) "Loan default" means failure to make a loan repayment within sixty days after the payment was due.~~

~~(35) "Local prioritization process" means a process to prioritize projects locally as specifically described in WAC 173-95A-050.~~

~~(36) "Match" means the portion of the eligible project costs not covered by a grant, including actual cash outlays, and noncash~~

~~(in-kind) contributions.~~

~~(37) "Maximum eligible costs" means the ceiling on the portion of the costs of a project that are eligible.~~

~~(38) "Nonpoint source water pollution" means pollution that enters any waters from widespread water- or land-based 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.~~

~~(39) "Offer list" means a list of projects prioritized for receiving financial assistance from the centennial program.~~

~~(40) "Previously funded objective" means a project or project element intended to address the same need as a project or project element that has been previously funded by a loan or grant from a funding program administered by the department.~~

~~(41) "Project" means water pollution control facilities or activities for which a loan or grant is awarded by the department.~~

~~(42) "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 by the federal government.~~

~~(43) "Public health emergency" means a situation in which illness or exposure known to cause illness is occurring or is imminent (as determined by the Washington state department of health).~~

~~(44) "Recipient" means a public body that applied for funding, has been offered funding, and has signed a funding agreement with the department.~~

~~(45) "Scope of work" means a detailed description of a project, including measurable objectives useful for determining successful completion. The scope of work is negotiated between the department and the loan or grant recipient.~~

~~(46) "Severe public health hazard" means a situation in which the potential for illness exists, but illness is not occurring or imminent (as determined by the Washington state department of health).~~

~~(47) "Sewer" means a pipe and related pump stations located on public property, or on public rights of way and easements, that conveys wastewater from individual buildings or groups of buildings to a treatment plant.~~

~~(48) "Side sewer" means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.~~

~~(49) "Small flows" means flows from commercial, industrial, or institutional sources that enter a sanitary sewer system.~~

~~(50) "Step process" means a systematic process that facilities projects must follow to be eligible for loans or grants.~~

~~(51) "Total eligible project cost" means the sum of all costs associated with a water quality project that have been determined to be eligible for loan or grant funding.~~

~~(52) "Total project cost" means the sum of all eligible and~~

~~ineligible costs associated with a water quality project.~~

~~(53) "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.~~

~~(54) "Water pollution control facilities" 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.~~

~~(55) "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.~~

~~(56) "Water resource inventory area" or "WRIA" means one of sixty-two watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in chapter 173-500 WAC as it existed on January 1, 1997.) 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 Protection 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: 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**

AMENDATORY SECTION (Amending Order 00-10, filed 12/8/00, effective 1/8/01)

WAC 173-95A-100 ((How are grants and loans managed?)) Grant and loan eligible. ((~~(1) Timely use of funds: Projects funded with loans or grants from the centennial fund must be spent in a timely fashion so that funds are put to work for the water quality of the state as soon as possible. To accomplish this, certain time restrictions are placed on the use of funds as follows:~~

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

~~(i) Any expenditure of funds which is eligible for reimbursement under the terms of the loan or grant agreement constitutes starting the project.~~

~~(ii) No more than one time extension of no more than twelve months may be made when there are valid reasons for the extension and when the extension is included in the signed funding agreement with the department.~~

~~(iii) Valid reasons for a time extension allowing a start date~~

~~more than sixteen months after the publication date of the final offer list are limited to:~~

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

~~(B) The recipient and the department agree that there is a need to do work during an environmental window in a specific season of the year.~~

~~(iv) If the funding recipient has one of these valid reasons to wait longer than sixteen months to start the project, the reasons why it will take longer and the schedule the recipient will follow must both be stated clearly in a signed loan or grant agreement.~~

~~(b) Work on a project must be completed within five years of the publication date of the final offer list on which the project was proposed or within a shorter time period if the shorter period is identified in the funding agreement for the project. When all work identified in the funding agreement scope of work is finished, the project is deemed to be completed. After the five-year time limit is reached, no further expenditures may be reimbursed unless an extension is made.~~

~~(i) No more than one time extension of no more than twelve months may be made when there are valid reasons for the extension; and~~

~~(A) The extension is requested no less than three months before the funding agreement is due to expire; and~~

~~(B) The department's water quality program manager agrees that the extension is for a valid reason.~~

~~(ii) Valid reasons for a time extension are limited to:~~

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

~~(B) The recipient and the department agree that there is a need to do work during an environmental window in a specific season of the year.~~

~~(iii) If the funding recipient has one of these valid reasons to be allowed a time extension, the reasons why it will take longer and the schedule the recipient will follow must both be stated clearly in a signed amendment to the existing loan or grant agreement.~~

~~(c) In-kind goods and services may be used as match for activities grants subject to ceiling amount restrictions covered in WAC 173-95A-030 and subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*.~~

~~(d) In-kind goods and services may be used as match for facilities grants only in the case of projects undertaken under the small town environmental program, or "STEP."~~

~~(2) Prior authorization to incur costs. In cases where a project has been identified on a final offer list, the applicant may make a written request to the water quality program manager, asking to begin incurring costs related to a loan or grant for which there is not yet a signed loan or grant agreement. If the department concurs with this request, the water quality program manager will send the applicant a letter authorizing the costs.~~

~~The applicant incurs the costs at their own risk. When an agreement is signed, previously incurred costs that are not eligible under the terms of the agreement are the sole responsibility of the applicant.~~

~~(3) Appeals of loan and grant agreement decisions: The only decisions which may be appealed are written decisions by the department made during the effective loan or grant agreement period. Appeals must be filed in writing to the department within forty-five days from the date of the disputed decision. Following the final decision of a dispute, the department and the recipient shall proceed with the project in accordance with the decision rendered. Administrative or legal costs and other expenses incurred as part of an appeal will not be eligible for reimbursement.~~

~~(4) The department, or at the department's discretion another authorized auditor, may audit the loan or grant agreement and records.~~

~~(5) The administration of all loans and grants will be subject to all terms and conditions in a funding agreement signed by the department and by the recipient.~~

~~(6) Ongoing management of most aspects of loan and grant projects is subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*, copies of which will be provided to all recipients.) 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: Chapter 70.146 RCW. 01-01-042 (Order 00-10), § 173-95A-100, filed 12/8/00, effective 1/8/01.]

AMENDATORY SECTION (Amending Order 00-10, filed 12/8/00, effective 1/8/01)

WAC 173-95A-110 ((General provisions.)) Loan only eligible.

~~((1) Other state and federal grant funding: Other grant funds provided by the state legislature, federal government, or from other sources will be managed in a manner consistent with the centennial rule.~~

~~(2) For all projects, the recipient must acknowledge department financial assistance in all reports, technical documents, publications, brochures, and other materials produced using funding from the loan or grant. All site-specific projects must have a sign of sufficient size to be seen from nearby roadways, acknowledging department financial assistance, and left in place throughout the life of the project. Department logos must be on all signs and documents. Logos will be provided as needed.))~~
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: Chapter 70.146 RCW. 01-01-042 (Order 00-10), § 173-95A-110, filed 12/8/00, effective 1/8/01.]

NEW SECTION

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 issues.

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**PART 2
LOAN INTEREST RATES**

NEW SECTION

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.

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**PART 3
HOW TO APPLY FOR FUNDING**

NEW SECTION

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:

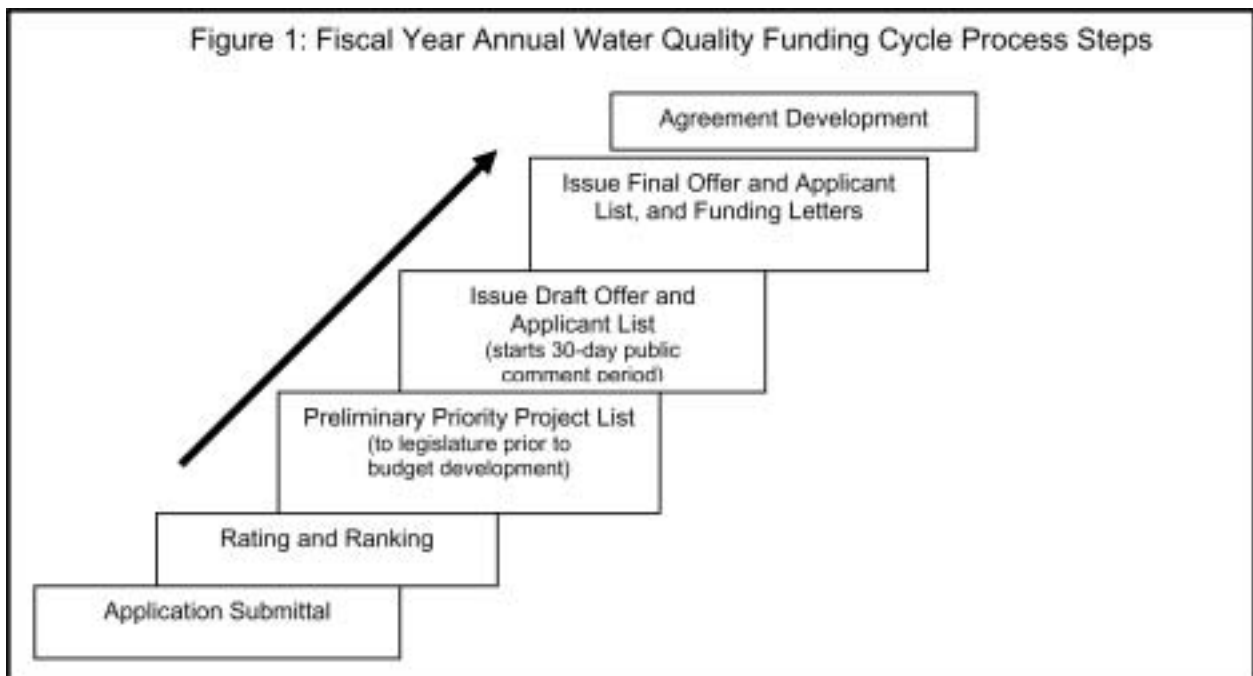
(a) Basic information such as names of contacts, addresses, and other tracking information;

- (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.

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NEW SECTION

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.

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NEW SECTION

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.

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PART 4
FINANCIAL HARDSHIP ASSISTANCE

NEW SECTION

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 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

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NEW SECTION

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.

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NEW SECTION

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 below the state MHI, the applicant may be eligible for a fifty percent grant, not to exceed five hundred thousand dollars.

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**PART 5
REQUIREMENTS FOR MANAGING GRANTS AND LOANS**

NEW SECTION

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.

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NEW SECTION

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.

[]

NEW SECTION

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 for up to ten percent of the engineer's 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.

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NEW SECTION

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.

[]

NEW SECTION

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 of the time frames the funding agreement is signed. 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.

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NEW SECTION

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.

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NEW SECTION

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.

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NEW SECTION

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.

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PART 6 COMPLIANCE WITH OTHER LAWS, RULES, AND REQUIREMENTS

NEW SECTION

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.

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NEW SECTION

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.

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PART 7
TIMELY USE OF CENTENNIAL PROGRAM MONEYS

NEW SECTION

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.

(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.

[]

NEW SECTION

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.

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**PART 8
GENERAL ADMINISTRATIVE PROVISIONS**

NEW SECTION

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.

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NEW SECTION

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.

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NEW SECTION

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.

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REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-95A-030	How and under what conditions, can money from the centennial fund be used?
WAC 173-95A-040	Where can I obtain details about the application and review process for centennial funds?
WAC 173-95A-050	How can a local area have a role in determining funding priorities?
WAC 173-95A-060	What are the limitations on the use of funds?
WAC 173-95A-070	How does the Growth Management Act impact the use of funds?
WAC 173-95A-080	What is the "step process" for planning facilities and activities projects?
WAC 173-95A-090	What other laws, regulations or requirements must recipients comply with?

