

AMENDATORY SECTION (Amending Order 98-10, filed 11/24/98, effective 12/25/98)

WAC 173-98-010 (~~((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 state water pollution control revolving fund (SRF), as authorized by chapter 90.50A RCW. This fund provides financial assistance to applicants throughout the state of Washington who need such assistance to meet high priority water quality management needs.))~~) 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 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.]

AMENDATORY SECTION (Amending Order 00-11, filed 12/8/00, effective 1/8/01)

WAC 173-98-020 (~~((What are the definitions of key terms?))~~)
Integrated funding approach. (~~((Unless the context clearly requires otherwise, the definitions in this section apply throughout this~~

chapter.

~~(1) "Act" means the Federal Water Pollution Control Act (33 U.S.C. 4661 et seq.).~~

~~(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 or by another agency with regulatory oversight that, when used singularly or in combination, prevent or reduce pollutant discharges.~~

~~(4) "Concentrated animal feeding operation" means 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 if the operation is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit; or the operation will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or the department or the U. S. Environmental Protection Agency determines the operation is considered to be polluting the waters of Washington state.~~

~~(5) "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.~~

~~(6) "Construction" means the erection, installation, expansion, or improvement of water pollution control facilities or activities.~~

~~(7) "Cost-effective alternative" means that alternative with the lowest present worth or equivalent annual value that achieves the requirements of the project while recognizing the environmental and other nonmonetary considerations.~~

~~(8) "Defeasance" means the setting aside in escrow or other special fund or account of sufficient investments and money dedicated to pay all principal of and interest on all or a portion of an obligation as it comes due.~~

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

~~(10) "Design" means the plans and specifications for water pollution control facilities or activities.~~

~~(11) "Director" means the director of the Washington state department of ecology or his or her authorized designee.~~

~~(12) "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.~~

~~(13) "The effective date of the loan agreement" means the date the loan agreement is signed by the department's water quality program manager.~~

~~(14) "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.~~

~~(15) "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.~~

~~(16) "EPA" means the United States Environmental Protection Agency.~~

~~(17) "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.~~

~~(18) "Existing residential need" means work required on the water quality based effluent limitations in the recipient's water pollution control facilities for the existing residential population in order to meet the recipient's National Pollution Discharge Elimination System or state waste discharge permit.~~

~~(19) "Facilities plan" means plans and studies necessary for treatment works to comply with enforceable requirements of the act and with state statutes. Facilities plans must include a systematic evaluation of alternatives that are feasible in light of the unique demographic, environmental or ecological, topographic, hydrologic and institutional characteristics of the area. Facilities plans must also demonstrate that the selected alternative is cost-effective.~~

~~(20) "Federal capitalization grant" means a federal grant awarded by EPA to the state as seed money to help establish the state water pollution control revolving fund.~~

~~(21) "Financial assistance" means each of the four types of assistance specified in WAC 173-98-030 (1) (b) through (f) and other assistance authorized by Title VI of the act and chapter 90.50A RCW.~~

~~(22) "Funding cycle" means the annual cycle of activities related to allocating funds for a single fiscal year.~~

~~(23) "Fund" means the state water pollution control revolving fund.~~

~~(24) "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.~~

~~(25) "Initiation of operation" means the actual date the water pollution control facilities initiates operation and the entity begins using the facilities for its intended purpose. This date may occur prior to final inspection and will be determined by the department after consultation with the recipient. This date may be the same or earlier than the date of project completion.~~

~~(26) "Infiltration and inflow" means water, other than wastewater, that enters a sewer system.~~

~~(27) "Infiltration and inflow correction" means the cost-effective alternative or alternatives identified in an approved facility plan for eliminating or reducing the infiltration and~~

~~inflow from an existing sewer system.~~

~~(28) "Intended use plan (IUP)" means a plan identifying the intended uses by the department of the amount of funds available for financial assistance from the state water pollution control revolving fund (SRF) for that fiscal year as described in section 606(c) of the act. The projects on the intended use plan will be ranked by environmental and financial need.~~

~~(29) "Loan agreement" means a legal contract between a recipient and the state, enforceable under state law, and specifying the terms and schedules under which assistance is provided.~~

~~(30) "Loan default" means failure to make a loan repayment within sixty days after the payment was due.~~

~~(31) "Local prioritization process" means a process to prioritize projects locally.~~

~~(32) "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:~~

~~(a) Atmospheric deposition, surface water runoff from agricultural lands, urban areas, forest lands, subsurface or underground sources; and~~

~~(b) Discharges from boats or other marine vessels.~~

~~(33) "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.~~

~~(34) "Project" means the scope of work for which financial assistance is issued.~~

~~(35) "Project completion" means the date the project is determined by the department as being complete.~~

~~(36) "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 recognized as such by the federal government at the time the SRF loan agreement is signed.~~

~~(37) "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.~~

~~(38) "Recipient" means an applicant for financial assistance which has signed an SRF loan agreement.~~

~~(39) "Reserve account" means, for a loan that constitutes revenue-secured debt, the account of that name created in the loan fund to secure the payment of the principal and interest on the loan.~~

~~(40) "Revenue-secured debt" means an obligation of the recipient secured by a pledge of the revenue of a utility and one not of a general obligation of the recipient.~~

~~(41) "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.~~

~~(42) "Senior lien obligations" means all revenue bonds and other obligations of the recipient outstanding on the date of execution of this agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of this 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.~~

~~(43) "Severe public health hazard" means a situation declared by the state department of health and the department in which the potential for illness exists, even if the illness is not currently occurring or imminent. For the purposes of this chapter there must be contamination of drinking water or contamination must be present on the surface of the ground in such quantities and locations to create a potential for public contact. The problem must generally involve a serviceable area including, but not limited to, a subdivision, town, city, or county. Also, the problem must be one which cannot be corrected through more efficient operation and maintenance of the wastewater disposal system(s).~~

~~(44) "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.~~

~~(45) "Side sewer" means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.~~

~~(46) "Small flows" means flows from commercial, industrial, or institutional sources that enter a sanitary sewer system.~~

~~(47) "State water pollution control revolving fund (SRF)" means the water pollution control revolving fund established by RCW 90.50A.020.~~

~~(48) "Step process" means a systematic process that facility projects must follow to be eligible for loans or grants.~~

~~(49) "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.~~

~~(50) "Total project cost" means the sum of all eligible and ineligible costs associated with a water quality project.~~

~~(51) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, including, but not limited to, change in:~~

- ~~(a) Temperature;~~
- ~~(b) Taste;~~
- ~~(c) Color;~~
- ~~(d) Turbidity; or~~
- ~~(e) Odor.~~

~~It also means a discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state that will or is likely to create a nuisance or render those waters harmful, detrimental, or injurious to the public health, safety, or welfare, or injurious to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or~~

to livestock, wild animals, birds, fish, or other aquatic life.

~~(52) "Water pollution control activities" means actions taken by a public body to achieve the following purposes:~~

~~(a) To control nonpoint sources of water pollution;~~

~~(b) To develop and implement a comprehensive conservation and management plan for estuaries; and~~

~~(c) To maintain, improve, or protect water quality through the use of water pollution control facilities, management programs, or other means.~~

~~(53) "Water pollution control facilities" means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater. Wastewater includes, but is 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 integral to the treatment process, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include facilities, equipment, and collection systems which are necessary to protect federally designated sole source aquifers.~~

~~(54) "Water resource inventory areas," sometimes referred to as "WRIAs," 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. All parts of the state of Washington are located in a single water resource inventory area.))~~ (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: 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.]

AMENDATORY SECTION (Amending Order 00-11, filed 12/8/00, effective 1/8/01)

~~WAC 173-98-030 ((How, and under what conditions, can money from the state water pollution control revolving fund be used?))~~

~~Definitions. ((1) Uses of the money. The state water pollution control revolving fund (SRF) may be used for the following purposes:~~

~~(a) To accept and retain funds from capitalization grants provided by the federal government, state matching funds appropriated in accordance with chapter 90.50A RCW, payments of principal and interest, and any other funds earned or deposited;~~

~~(b) To make loans to applicants in order to finance the planning, design, and/or the construction of water pollution control facilities, make loans to applicants for the implementation of nonpoint source pollution control management programs (which includes planning and implementing elements of the nonpoint source pollution assessment and management program), and make loans to applicants for the development and implementation of a comprehensive estuary conservation and management plan, subject to the requirements of the act;~~

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

~~(d) To buy or refinance the debt obligations incurred by applicants after March 7, 1985, for the construction of water pollution control facilities. (March 7, 1985, was the date that the amendments adding Title VI to the act were first considered by Congress. Any refinancing agreements must be for construction initiated after that date according to federal and state law);~~

~~(e) To guarantee or purchase insurance for local obligations where such an action would improve credit market access or reduce interest rates;~~

~~(f) 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 fund; and~~

~~(g) To finance the reasonable costs incurred by the department in the administration of the account as authorized by the act and chapter 90.50A RCW.~~

~~(2) Policies for establishing the terms of financial assistance. Recipients' interest rates will be based on the average market interest rate. The average market interest rate will be 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 SRF annual funding application cycle begins, using the daily market interest rate for that period.~~

~~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 5 but no more than 20 years: | Sixty percent of the average market rate. |

~~The director of the department of ecology or the director's designee may approve lower interest rates for the annual funding application cycle if a financial analysis of the fund demonstrates that lower interest rates for that year are not detrimental to the perpetuity of the fund.~~

~~(3) Financial hardship assistance for facilities construction.~~

~~(a) Financial hardship assistance may be available to loan recipients for the existing residential need portion of a water pollution control facilities construction project if the project will cause a residential sewer user charge in excess of one and one-half percent of the median household income.~~

~~(i) Median household income for this purpose is based on the most recent available census data, updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the Consumer Price Index.~~

~~(ii) If median household income data are not available for a community or if the community disputes the data used by the department, the department will allow a local government to conduct a scientific survey to determine the median household income.~~

~~(iii) In situations where a project is proposed for an area with demographics which may not be representative of the entire census designated place, the department may require a scientific survey to determine the median household income.~~

~~(iv) In rare cases where financial hardship cannot be established using residential user fees as a percent of median household income financial hardship determinations will be made on a case-by-case basis.~~

~~(b) The need for hardship assistance is calculated on water pollution control facilities construction costs associated with existing residential need at the time an application for funding is received by the department. The analysis does not include costs for growth. 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 growth, the hardship analysis would be based on the six million dollars for existing residential need.~~

~~(c) If the department determines that financial hardship exists, it may make changes to the offer of financial assistance in an attempt to lower the residential user charges below the financial hardship level for the existing residential need. These changes may include:~~

~~(i) Changing the structure of the loan agreements with terms to lengthen the repayment period to a maximum of twenty years,~~

~~lowering the interest rate, or a combination of a lower interest rate and an extended term; and, if this is not sufficient,~~

~~(ii) Offering partial centennial grant funding as allowable under the provisions of chapter 173-95A WAC.~~

~~(d) If an applicant is requesting financial hardship assistance, it should submit a completed financial hardship analysis form with its application for financial assistance.)) 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 this agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of this 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 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.

(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: 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.]

AMENDATORY SECTION (Amending Order 00-11, filed 12/8/00, effective 1/8/01)

~~WAC 173-98-040 ((Where can I obtain more detail about the application, review, and issuance processes for funds from the state)) Water pollution control revolving fund((?)) (revolving fund) uses. ((-i) Applicants must apply for financial assistance in order to be considered for funding and for their projects to be included on the intended use plan. Projects must be on a current or past intended use plan in order to receive SRF loans.~~

~~(a) A schedule of the annual funding cycle will be published no later than the last business day of November each year, for the funding corresponding to the next state fiscal year.~~

~~(b) The period during which applications are accepted each year will last a minimum of sixty days, and application forms and guidelines for that year will be made available at the beginning of that period.~~

~~(c) In the first thirty days of the period during which~~

~~applications are accepted each year, the department will conduct at least one application workshop in each of the department's four regions.~~

~~(d) When there is limited demand for funds from the current funding cycle, projects from any past intended use plan, starting with the most recent, may be funded in priority order, where:~~

~~(i) Cost overruns to a funded project are shown to be justifiable; or~~

~~(ii) Final cost reconciliation shows that higher costs are reasonable; or~~

~~(iii) The applicant received partial funding for the project and the change is shown on a current intended use plan.~~

~~(2) The application for funding will consist of two parts. Part one of the application will request information for identification, description, and other information about the project for tracking purposes, and part two of the application will request information about the water quality problem or problems being addressed by the project and the proposed solutions to the problems. In the application, applicants will be asked to fully describe the environmental and financial need for the project. Applications for SRF financial assistance for facilities projects must address problems such as public health emergencies, severe public health hazards, the need to provide secondary or advanced treatment, the need to improve and protect water quality, reduction of combined sewer overflows, and other environmental needs. Applications for SRF financial assistance for nonpoint projects must implement the remedies and prevention of water quality degradation associated with nonpoint source water pollution and must not be inconsistent with needs identified in the department's approved nonpoint source pollution management plan.~~

~~(3) The application form, part two, will include five main question areas, each with subsidiary questions designed to elicit the information needed to evaluate the project. The maximum points awarded for these question areas equal ninety percent of the total possible score with a maximum of ten percent coming from the local prioritization. The five main question areas and their associated maximum point percentages are:~~

~~(a) "What is the overall water quality problem and how will the problem be solved or addressed by the project?" This question is intended for general background purposes and to give evaluators an overview of the proposed project; no points are assigned.~~

~~(b) "What are the specific public health and water quality impairments caused by the problem and what are the pollution prevention aspects?" This question area is worth a maximum of thirty-four percent of the total score.~~

~~(c) "How will your proposed project address the water quality problem, and what are your measures of success?" This question area is worth a maximum of thirty-four percent of the total score.~~

~~(d) "What are some of the local initiatives you have taken that will help make your project a success?" This question area is worth a maximum of twelve percent of the total score.~~

~~(e) "Are there any state of Washington or federal mandates~~

that this proposed project addresses?" This question area is worth a maximum of ten percent of the total score.

(f) "Local prioritization process." This question area is worth a maximum of ten percent of the total score. The local prioritization process is described in detail in WAC 173-95A-050.

(4) The department will evaluate the proposed projects based on the information contained in the applications.

(a) Projects will be ranked according to potential water quality benefit and protection of public health.

(b) Projects which have the highest environmental and public health need will be given priority for financial assistance under the SRF program.

(c) Because funds must be used in a timely manner, readiness to proceed is also used in establishing the priority of projects.

(d) Other factors, including funding provisions in chapter 90.50A RCW and provisos identified in the department's biennial capital budget, relationship to the department's published plans such as the *Water Quality Management Plan to Control Nonpoint Sources of Pollution* and total maximum daily load studies, and relationship to published plans created by other federal and state agencies will be included in the priority evaluation.

(e) The department will request other agencies to provide evaluation assistance as needed, including but not limited to, the Washington state conservation commission, the Puget Sound action team, and the Washington state department of health.

(f) The department will coordinate maximum funding amounts and other issues with other state and federal funding agencies when possible.

(5) The total score that each proposed project receives based on the application form, part two, will be added to the local prioritization score (see WAC 173-95A-050 for more information on the local priority-setting process) to develop the final score for the proposed project.

(6) The department will prepare a draft intended use plan each year after evaluating all applications. The draft intended use plan will list projects in rank order starting with the project receiving the most points in its final score. This will also generally be the order that projects may be offered financial assistance. After issuing the draft intended use plan the department will allow a minimum of thirty days for public review and comment on the draft intended use plan. No later than fifteen days before the end of the public review and comment period the department will conduct at least one workshop to explain the draft intended use plan, answer questions about the draft intended use plan and the evaluation process, and provide details on the public comment process.

(7) The final intended use plan will be issued no later than sixty days after the end of the public review and comment period. The final intended use plan will reflect any changes made as a result of public comments or other information received during the public review and comment period, and will include a responsiveness summary. The final intended use plan will generally list projects

~~in the order that projects may be offered financial assistance.))~~
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 programs including planning and implementing elements of the Washington's water quality management plan to control nonpoint sources of pollution;

(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: 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

AMENDATORY SECTION (Amending Order 98-10, filed 11/24/98, effective 12/25/98)

WAC 173-98-100 (~~((How do recipients comply with the state environmental review process?))~~) Eligible. (~~((1) All recipients which receive SRF loans must meet the provisions of the State Environmental Policy Act (SEPA), chapter 43.21C RCW, and the SEPA~~

~~rules, chapter 197-11 WAC. Additional provisions are currently needed by federal law under Title VI of the act to satisfy the state's responsibility to help ensure that recipients comply with the National Environmental Policy Act (NEPA) and other applicable environmental laws, regulations, and executive orders. The lead agency (WAC 197-11-050(2)) responsible for SEPA compliance for each project under the SRF program shall also comply with the following additional provisions. When a categorical exclusion, finding of no significant impact, or a record of decision has been issued under NEPA for the same project scope of work, no additional environmental documentation is required. Applicants will need to adopt the federal environmental documentation to meet their responsibilities as required by SEPA rules WAC 197-11-600, 197-11-610, and 197-11-630. If federal environmental documentation has not been submitted for approval to the appropriate federal agency, applicants and designated lead agencies must:~~

~~(a) Consult with the department before determining that the project is categorically exempt from SEPA and obtain concurrence that the project meets the criteria for a categorical exemption (WAC 197-11-305) and give public notice of the categorical exemption by publishing a notice in a newspaper of area-wide circulation. This notice shall include the locations where the public may review the facilities plan and other environmental information.~~

~~(b) Consult with the department prior to issuing a threshold determination (WAC 197-11-330), and submit a copy of the environmental checklist (WAC 197-11-315) and a recommended threshold determination to the department.~~

~~(c) Obtain written concurrence from the director with the recommended threshold determination as to whether a determination of nonsignificance (DNS) (WAC 197-11-340) or an environmental impact statement (EIS) is to be issued prior to issuing the actual document.~~

~~(d) Issue the threshold determination, determination of nonsignificance (DNS) or determination of significance (DS) (WAC 197-11-360) and submit copies to the department; two copies shall be sent to the department's environmental review section and one copy to the regional water quality program (WQ) of the department. The director must concur in writing with the findings of the checklist and DNS if a DNS is issued.~~

~~(e) Give public notice of the threshold determination by publishing a notice in a newspaper of area-wide circulation. This notice shall include the locations where the public may review the threshold determination, facilities plan, and other environmental information.~~

~~(f) Distribute copies of the threshold determination and supporting documents to other affected local, state, and federal agencies, Indian tribes, and the public.~~

~~(g) When a DS is issued, the lead agency will develop the final scope of elements to be addressed in the environmental impact statement (EIS) and obtain written concurrence from the director. The department shall be consulted throughout the EIS process.~~

~~(h) Distribute copies of the draft and final EIS to the department; two copies shall be sent to both the environmental review section and the department's water quality program.~~

~~(i) Give public notice of the draft and final EIS by publishing notices in a newspaper of area-wide circulation. Notices shall include the locations where the public may review the draft and final EIS or obtain copies.~~

~~(j) Distribute copies of the draft and final EIS to other affected local, state, and federal agencies, Indian tribes, and the public.~~

~~(k) The director must concur in writing with the finding of the final EIS.~~

~~(2) The lead agency shall issue a notice of action for the final EIS regarding the preferred alternative in accordance with RCW 43.21C.080, WAC 197-11-680, and 197-11-990.~~

~~(3) A cost-effectiveness analysis will be required for all SRF projects. Planning must include a comparison of the total cost, i.e., capital, operation and maintenance, and replacement costs of the project with other alternatives, including the no action alternative. The comparison of the total costs, e.g., total present worth or annual equivalent costs of projects for the planning period, must be included. Cost-effective analyses must also include nonmonetary cost of the project, i.e., the environmental impact, resource utilization, implementability, etc. This analysis must be included in the planning document and must be summarized in the EIS or DNS. Financial assistance under the SRF program will be offered to the cost-effective solution to the water pollution control problem.~~

~~(4) All mitigation measures committed to in the environmental checklist or state EIS, or in the finding of no significance impact/environmental assessment or record of decision/federal EIS (for federally approved projects) will become SRF loan agreement conditions. Applicants must complete all mitigation measures required. Failure to abide by these conditions will result in withholding of payments and may result in immediate repayment of the loan.~~

~~(5) The applicant must comply with the requirements of applicable environmental laws, regulations, and executive orders. Concurrence from the director will be based on best available information provided by the applicant. The department is not responsible for concurrence based on erroneous information.))~~
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) 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 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.]

AMENDATORY SECTION (Amending Order 00-11, filed 12/8/00, effective 1/8/01)

WAC 173-98-110 (~~((What are the repayment options and schedules?))~~) **Noneligible.** (~~((1) General provisions.~~

~~When the scope of work identified in the SRF loan agreement has been fully completed and/or the initiation of operation date has been determined:~~

~~(a) The department and recipient will execute a final SRF loan agreement amendment which details the final loan amount. This amount will include the principal from disbursements made to recipients and accrued interest. Interest will accrue on each disbursement as it is paid to the recipient.~~

~~(b) The department will prepare according to the SRF loan agreement, a repayment schedule which fully amortize the final loan amount within twenty years of project completion. The first repayment of principal and interest will be due no later than one year after the initiation of operation date or at project completion date, whichever occurs first. Equal payments will be due every six months after this first payment. Loan balances may be repaid or additional principal payments may be made at any time without penalty.~~

~~(c) If any amount of the final loan amount or any other amounts owed to the department remains unpaid after it becomes due and payable, the department may assess a late charge. The late charge shall be additional interest at the rate of one percent per month, or fraction thereof, starting on the date the debt becomes past due and until it is paid in full.~~

~~(d) If the due date for any semiannual 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.~~

~~(2) Phased or segmented project. Where a project has been phased or segmented, the general provisions for repayment shall apply to the completion of individual phases or segments.~~

~~(3) More than five years to complete project. When a project approved by the department takes longer than five years to complete, loan repayment must begin within five years of the first disbursement for the project, unless the director determines that the fund is fiscally sound without this repayment schedule. Repayments for these loans must follow the general provisions as outlined in subsection (1) (b) of this section.~~

~~(4) Security for loan repayment. 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 SRF loan agreement shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, or abatement of any kind.~~

~~(a) General obligation. When repayment of a loan is secured by a general obligation pledge, the recipient shall pledge for so long as the loan is outstanding, to include in its budget and levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote of its electors, on all of the taxable property within its boundaries in an amount sufficient, together with other money legally available and to be used for loan repayment, to pay when due the principal of and interest on the loan, and 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.~~

~~(b) 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. In such cases:~~

~~(i) Lien position. Repayment of a loan shall constitute a lien and charge (A) 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 and, (B) if applicable, upon utility local improvement district assessments prior and superior to any other charges whatsoever.~~

~~(ii) Reserve requirement. For loans that are revenue-secured debt with terms greater than five years, the recipient must accumulate a reserve for the loan equivalent to at least the average annual debt service on the loan during the first five years of the repayment period of the loan. This amount shall be deposited in a reserve account in the loan fund in approximately equal annual payments commencing within one year after the initiation of operation or the project completion date, whichever comes first. "Reserve account" means, for a loan that constitutes~~

~~revenue-secured debt, an account of that name created in the loan fund to secure the payment of the principal of and interest on the loan. The amount on deposit in the reserve account may be applied by the recipient (A) to make, in part or in full, the final repayment to the department of the loan amount or, (B) if not so applied, for any other lawful purpose of the recipient once the loan amount, plus interest and any other amounts owing to the department hereunder, have been paid in full.~~

~~(5) Repayment from other than pledged sources. A recipient may repay any portion of its loan from any legally available funds other than those pledged in its SRF loan agreement to repay the loan.~~

~~(6) No defeasance or advance refunding. So long as the department holds a loan, the recipient shall not be entitled to, and shall not effect, its economic defeasance or advance refunding.) 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 issues.

[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

NEW SECTION

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;

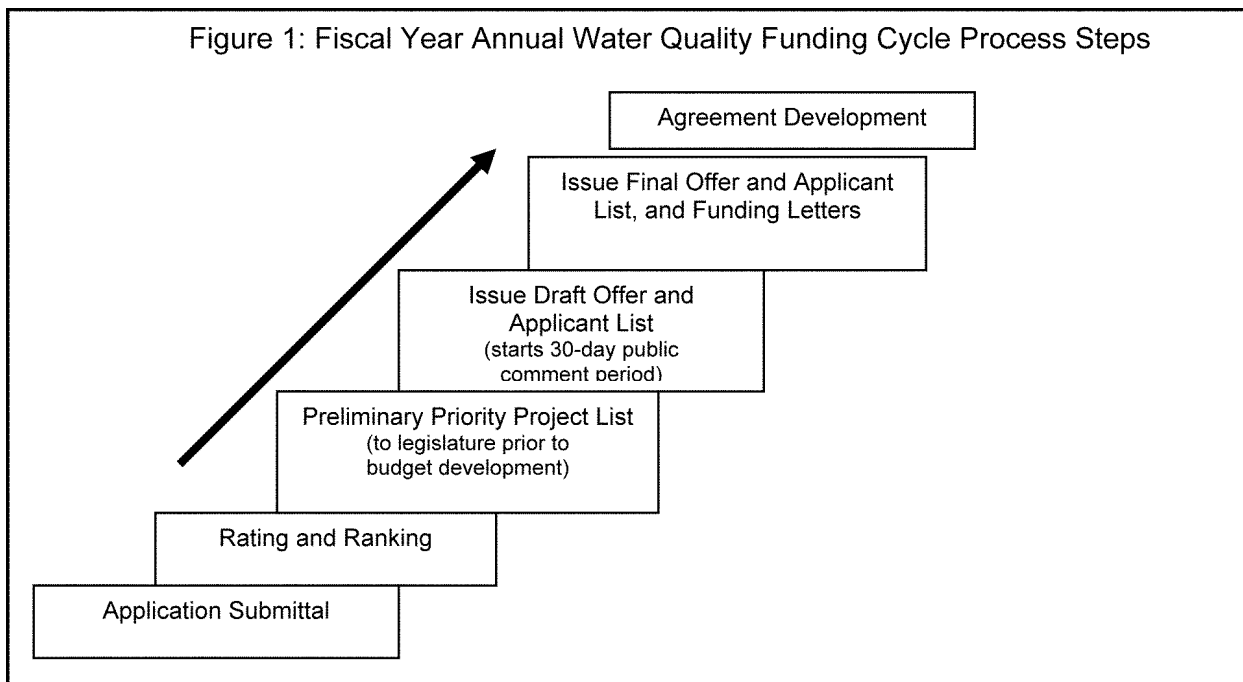
(j) Local initiatives, commitments, or priorities related to the project; or

(k) Other information requested by the department.

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NEW SECTION

WAC 173-98-210 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 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.

[]

NEW SECTION

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.

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NEW SECTION

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.

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**PART 3
FINANCIAL HARDSHIP ASSISTANCE**

NEW SECTION

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 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 |

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NEW SECTION

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

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NEW SECTION

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 |

[]

**PART 4
LOAN TERMS**

NEW SECTION

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.

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NEW SECTION

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.

[]

NEW SECTION

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.

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NEW SECTION

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) The director may extend the first repayment due date if it is not detrimental to the perpetuity of the revolving fund. However, this will not change the total length of the loan terms, rather, the loan amount will be amortized over a shorter period of time;

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

(5) 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;

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

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

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NEW SECTION

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.

[]

NEW SECTION

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.

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NEW SECTION

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.

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NEW SECTION

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.

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**PART 5
WATER POLLUTION CONTROL REVOLVING FUND REQUIREMENTS FOR MANAGING
LOANS**

NEW SECTION

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.

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NEW SECTION

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.

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NEW SECTION

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 for up to ten percent of the engineer's 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.

[]

NEW SECTION

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 of the time frames the funding agreement is signed. 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.

[]

NEW SECTION

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.

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NEW SECTION

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.

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NEW SECTION

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.

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

NEW SECTION

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.

[]

PART 7
COMPLIANCE WITH OTHER LAWS, RULES, AND REQUIREMENTS

NEW SECTION

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.

[]

NEW SECTION

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.

[]

NEW SECTION

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 significance 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.

[]

NEW SECTION

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 projects for the planning period;

(b) The no action alternative; and

(c) The nonmonetary cost of the project, 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.

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PART 8
TIMELY USE OF REVOLVING FUND LOAN MONEYS

NEW SECTION

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.

(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.

[]

NEW SECTION

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.

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ADMINISTRATIVE PROVISIONS

NEW SECTION

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.

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NEW SECTION

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.

[]

NEW SECTION

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.

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NEW SECTION

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.

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NEW SECTION

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.

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NEW SECTION

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.

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NEW SECTION

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.

[]

NEW SECTION

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.

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REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|----------------|---|
| WAC 173-98-050 | What are the limitations on the use of funds and how are the funds categorized? |
| WAC 173-98-060 | What is the step process for planning facilities and activities projects? |
| WAC 173-98-070 | What other laws, regulations, or requirements must recipients comply with? |
| WAC 173-98-075 | How does the Growth Management Act impact the use of funds? |
| WAC 173-98-080 | Indemnification. |
| WAC 173-98-090 | How are loans managed? |

