

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

WAC 173-98-010 Purpose. The purpose of this chapter is to set forth requirements for the Washington state department of ecology's (department) administration of Washington state's water pollution control revolving fund (revolving fund), and the water pollution control revolving administration account (administration account) as authorized by chapter 90.50A RCW, water pollution control facilities financing.

((This)) The revolving 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.

The administration account is comprised of an administration charge applied to the outstanding loan balance on revolving fund loans. The administration account may be used for the following:

(1) Administration costs associated with conducting application processes, managing contracts, collecting loan repayments, managing the revolving fund, providing technical assistance, and meeting state and federal reporting requirements; and

(2) Information and data system costs associated with loan tracking and fund management.

At the point where the administration account adequately covers the program administration costs, the department may no longer use the federal administration allowance. If a federal capitalization grant is awarded after that point, all federal capitalization grant dollars must be used for making loans.

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

(1) **Act** means the federal Clean Water Act (33 U.S.C. 1251-1387).

(2) **Activities**, see water pollution control activities.

(3) **Annual debt service** means the amount of debt the applicant is obligated to pay on the loan in one year.

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

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

(6) **Capitalization grant** means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the revolving fund.

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

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

- (9) **Competitive funding** means moneys available for projects through a statewide evaluation process.
- (10) **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.
- (11) **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.
- (12) **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.
- (13) **Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.
- (14) **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.
- (15) **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).
- (16) Debt service means the total of all principal, interest, and administration charges associated with a water pollution control revolving fund loan that must be repaid to the department by the public body.
- (17) **Department** means the Washington state department of ecology.
- ~~((+17+))~~ (18) **Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.
- ~~((+18+))~~ (19) **Director** means the director of the Washington state department of ecology or his or her authorized designee.
- ~~((+19+))~~ (20) **Draft offer and applicant list** means a catalog of all applications for financial assistance considered and those proposed for funding, based on estimates of state and federal budgets.
- ~~((+20+))~~ (21) **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.
- ~~((+21+))~~ (22) **Effective date** means the date the loan agreement is signed by the department's water quality program manager.
- ~~((+22+))~~ (23) **Eligible cost** means the portion of a facilities or activities project that can be funded based on program eligibility as defined in WAC 173-98-100 and in the most recently updated edition of the *Water Quality Financial Assistance Guidelines* (publication # 10-10-049).

((+23+)) (24) Energy efficiency means the use of improved technologies and practices to reduce the energy consumption of water quality projects, use energy in a more efficient way, and produce/use renewable energy.

((+24+)) (25) 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.

((+25+)) (26) Engineering report means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC.

((+26+)) (27) Environmental degradation means the reduced capacity of the environment to meet social and ecological objectives and needs.

((+27+)) (28) 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.

((+28+)) (29) Environmentally innovative means projects that demonstrate new or innovative approaches to managing water quality issues in a more sustainable way.

((+29+)) (30) Equivalent residential unit (ERU) means a unit of measurement used to express the average sewage loading discharged from a typical full-time single-family dwelling unit.

((+30+)) (31) Estimated construction cost means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

((+31+)) (32) Existing need means water pollution control facility's capacity reserved for all users, at the time of application.

((+32+)) (33) Existing residential need means that portion of a water pollution control facility's capacity reserved for residential structures that:

(a) Exist within the project service area at the time of application;

(b) Are connected to the facility or scheduled to be connected to the facility in an approved engineering report; and

(c) Will bear the financial burden of paying for the new facility.

((+33+)) (34) Facilities, see water pollution control facility.

((+34+)) (35) 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.

((+35+)) (36) Federal capitalization grant, see capitalization grant.

((+36+)) (37) Final offer and applicant list means a catalog of all applications for financial assistance considered and those offered funding, based on adopted state and federal budgets.

((+37+)) (38) Force account means loan project work performed using labor, materials, or equipment of a public body.

((+38+)) (39) Forgivable principal means the portion of a loan made by the department that is not required to be paid back by the borrower if allowable by Congress through federal appropriation.

((+39+)) (40) Funding category see "water pollution control activities funding category," "water pollution control facilities fund-

ing category," "preconstruction funding category," and "green project reserves funding category."

((+40+)) (41) **Funding cycle** means the events related to the competitive process used to allocate moneys from the revolving fund, centennial clean water program, and the Clean Water Act section 319 non-point source program for a state fiscal year.

((+41+)) (42) **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.

((+42+)) (43) **Green infrastructure** means a wide array of practices at multiple scales that manage wet weather and that maintain and restore natural hydrology by infiltrating, evapotranspiring and harvesting and using storm water.

((+43+)) (44) **Green project reserves** means water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects.

((+44+)) (45) **Green project reserves funding category** means that portion of the revolving fund dedicated to green project reserves projects.

((+45+)) (46) **Growth** means the portion of the total flows to a facility that is reserved for future residential, commercial, industrial, and institutional flows.

((+46+)) (47) **Indirect cost** means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

((+47+)) (48) **Infiltration and inflow** means water, other than wastewater, that enters a sewer system.

((+48+)) (49) **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.

((+49+)) (50) **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 before final inspection or project completion.

((+50+)) (51) **Intended use plan** means a document identifying the types of projects proposed and the amount of all money available for financial assistance from the revolving fund for a fiscal year as described in section 606(c) of the act.

((+51+)) (52) **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.

((+52+)) (53) **Loan agreement** means a contractual arrangement between a public body and the department that involves a disbursement of moneys that must be repaid.

((+53+)) (54) **Loan default** means failure to make a loan repayment to the department within sixty days after the payment was due.

((+54+)) (55) **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.

((+55+)) (56) **Perpetuity** means the point at which the revolving fund is earning at least fifty percent of the market rate for tax-exempt municipal bonds on its loan portfolio.

((+56+)) (57) **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.

((+57+)) (58) **Preconstruction** means facility planning, facility design, rate studies, value engineering, sewer use ordinances, and utility formation.

((+58+)) (59) **Preconstruction funding category** means that portion of the revolving fund dedicated to preconstruction projects.

((+59+)) (60) **Preliminary project priority list** means a catalog of all applications for financial assistance considered for funding and submitted to the Washington state legislature for its consideration during budget development.

((+60+)) (61) **Project** means a water quality improvement effort funded with a grant or loan.

((+61+)) (62) **Project completion or expiration** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

((+62+)) (63) **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.

((+63+)) (64) **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.

((+64+)) (65) **Recipient** means a public body that has an effective loan agreement with the department.

((+65+)) (66) **Reserve account** means an account created by the recipient to secure the payment of the principal and interest on the revolving fund loan.

((+66+)) (67) **Residential** means the portion of the total flows to a facility that originates from single-family houses, apartments, mobile home parks, small commercial facilities, and community facilities such as local K-12 public schools, libraries, and fire stations.

((+67+)) (68) **Revenue-secured debt** means an obligation of the recipient secured by a pledge of the revenue of a utility.

((+68+)) (69) **Revolving fund** means Washington state's water pollution control revolving fund.

((+69+)) (70) **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.

((+70+)) (71) **Scope of work** means a detailed description of project tasks, milestones, and measurable objectives.

((+71+)) (72) **Senior lien obligations** means all revenue bonds and other obligations of the recipient outstanding on the date of execution of a loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of a loan agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.

((+72+)) (73) **Service area population** means the number of people served in the area of the project.

((+73+)) (74) **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.

((+74+)) (75) **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.

((+75+)) (76) **Side sewer** means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

((+76+)) (77) **State environmental review process** (SERP) means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 C.F.R. § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

((+77+)) (78) **Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

((+78+)) (79) **Total project cost** means the sum of all expenses associated with a water quality project.

((+79+)) (80) **Water efficiency projects** means the use of improved technologies and practices to deliver equal or better water quality services with less water. Water efficiency encompasses conservation and reuse efforts, as well as water loss reduction and prevention, to protect water resources for the future.

((+80+)) (81) **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 the waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

((+81+)) (82) **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.

((+82+)) (83) **Water pollution control activities funding category** means that portion of the revolving fund dedicated to nonpoint source pollution projects.

((+83+)) (84) **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.

((+84+)) (85) **Water pollution control facilities funding category** means that portion of the revolving fund dedicated to facilities projects.

((+85+)) (86) **Water pollution control revolving fund** (revolving fund) means the water pollution control revolving fund established by RCW 90.50A.020.

((+86+)) (87) **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).

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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 and 173-98-310 for hardship interest rates.

Figure 6: Loan Terms and Interest Rates

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

(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.

(5) An administration charge will be applied to all loans that enter repayment after the effective date of this section. The following conditions apply to the administration charge.

(a) The administration charge will be applied to the outstanding loan balance at the time of each payment.

(b) The administration charge will be subtracted from the interest rate established in the loan agreement so there is no additional cost to the borrower.

(c) The administration charge will not be applied to loans with interest rates less than the administration charge.

(d) The maximum allowable administration charge is one percent. Initially the administration charge will be set at this level.

(e) Beginning with its 2017-2019 biennial operating budget submittal and each biennium thereafter, the department will compare the projected administration account balance and the projected administration charge income with projected program costs, including an adequate working capital reserve as defined by the office of financial management. In its submittal to the office of financial management, the department may:

(i) Find that the projected administration charge income is inadequate to fund the cost of administering the program, and that the rate of the charge must be increased; however, the administration charge may never exceed one percent;

(ii) Find that the projected administration charge income exceeds what is needed to fund the cost of administering the program, and that the rate of the charge must be decreased;

(iii) Find that there is an excess balance in the administration account, and that the excess must be transferred to the water pollution control revolving fund to be used for loans; or

(iv) Find that there is no need for any rate adjustments or balance transfers.

(f) If the department determines the administration charge should be adjusted, it will increase (up to the maximum of one percent) or decrease the administration charge and apply the new administration charge to loans that enter repayment after the administration charge has been adjusted. Loans already in repayment will not be affected by the adjusted administration charge.