

**CHAPTER 963. PENNSYLVANIA INFRASTRUCTURE  
INVESTMENT AUTHORITY ASSISTANCE**

Sec.	
963.1.	Definitions.
963.2.	Purpose.
963.3.	Scope.
963.4.	Applicant eligibility.
963.5.	Financial assistance criteria.
963.6.	Funds and accounts.
963.7.	Application procedure.
963.8.	Wastewater project evaluation criteria.
963.9.	Water project evaluation criteria.
963.9a.	Stormwater project evaluation criteria.
963.10.	Approval of applications: priority of loans.
963.11.	Eligible costs.
963.12.	Ineligible costs.
963.13.	Advance funding.
963.14.	Grants.
963.15.	Loans.
963.16.	Other forms of assistance.
963.17.	Funding limitations.
963.18.	Project implementation and reporting.
963.19.	Continuing education of system operators.
963.20.	Second opinion project review.

**Authority**

The provisions of this Chapter 963 issued under section 6 of the Pennsylvania Infrastructure Investment Authority Act (35 P. S. § 751.6); amended under sections 5(c)(2) and 6(4) of the Pennsylvania Infrastructure Investment Authority Act (35 P. S. §§ 751.5(c)(2) and 751.6(4)), unless otherwise noted.

**Source**

The provisions of this Chapter 963 adopted February 24, 1989, effective February 25, 1989, 19 Pa.B. 771, unless otherwise noted.

**Cross References**

This chapter cited in 25 Pa. Code § 965.1 (relating to definitions); 25 Pa. Code § 965.2 (relating to applicability); and 25 Pa. Code § 965.6 (relating to application procedures).

**§ 963.1. Definitions.**

The following words and terms, when used in this chapter, have the following meaning, unless the context clearly indicates otherwise:

*Act*—The Pennsylvania Infrastructure Investment Authority Act (35 P. S. §§ 751.1—751.20).

*Administrative staff*—The staff specifically assigned to administer the regular business of the Board.

*Applicant*—An owner or operator of a facility or system for the collection, treatment or disposal of wastewater, including industrial wastewater, or for the collection, treatment, storage or distribution of drinking water or of nonpoint source projects or estuary protection projects that submits a written application requesting financial assistance.

*Approved applicant*—An applicant whose application for financial assistance has been approved by the Board.

*Authority*—The Pennsylvania Infrastructure Investment Authority.

*Binding commitment*—A legal obligation between the Authority and an approved applicant that defines the terms and conditions for financial assistance from the Authority including assistance from the Clean Water State Revolving Fund.

*Board*—The Board of Directors of the Authority.

*Bonds*—Bonds, notes or their evidences of indebtedness issued by the Authority under the act.

*Borrower*—An approved applicant who has entered into a binding commitment with the Authority.

*Clean Streams Law*—The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

*Clean Water Act*—The Federal Water Pollution Control Act of 1977, as amended by the Water Quality Act of 1987 (33 U.S.C.A. §§ 1251—1387).

*Comprehensive Water Facilities Plan*—A comprehensive plan for wastewater disposal and piped drinking water facilities prepared by the Department under section 11 of the act (35 P. S. § 751.11).

*Construction*—Actions necessary for the erection, building, acquisition, alteration, remodeling, improvement or expansion of drinking water or sewerage facilities or nonpoint source projects or estuary protection projects.

*County-prepared watershed plans*—Stormwater management plans for the watershed prepared under the Storm Water Management Act.

*Department*—The Department of Environmental Protection of the Commonwealth.

*EPA*—The United States Environmental Protection Agency.

*Eligible cost*—The cost of labor, materials, machinery and equipment, lands, property, rights and easements, plans and specifications, surveys or estimates of costs and revenues, prefeasibility studies, engineering and legal services and other expenses necessary or incident to the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or part of a project.

*Estuary protection project*—A project necessary for development and implementation of an estuary conservation and management plan under section 320 of The Clean Water Act (33 U.S.C.A. § 1330).

*Governmental unit*—An agency of the Commonwealth or a county, municipality or school district, or an agency, instrumentality, authority or corporation thereof; or a public body having local or regional jurisdiction or power.

*Industrial wastewater project*—The eligible costs associated with the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or part of a facility or system for the collection, treatment or disposal of industrial wastewater resulting from manufacturing or industry or from another establishment.

*Nonpoint source project*—A project which does not have a discernable or confined discrete conveyance, and which is necessary for the implementation of a nonpoint source pollution control program under section 319 of the Clean Water Act (33 U.S.C.A. § 1329).

*Operation/maintenance costs*—Costs associated with activities required to assure the dependable, efficient and economical function of wastewater or drinking water facilities, nonpoint source projects and estuary protection projects or costs associated with the preservation of the functional integrity and efficiency of equipment and structures, including preventative maintenance and replacement equipment.

*Part I Permit*—A National Pollutant Discharge Elimination System (NPDES) permit issued by the Department under section 5 of The Clean Streams Law (35 P.S. § 691.5) and section 402 of the Clean Water Act (33 U.S.C.A. § 1342).

*Part II permit*—A Water Quality Management permit issued by the Department under section 5 of The Clean Streams Law.

*Project*—The eligible costs associated with the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or part of any system or facility, whether publicly or privately owned:

- (i) For the collection, treatment or disposal of wastewater, including industrial waste, or for nonpoint source projects or estuary protection projects.
- (ii) For the supply, treatment, storage or distribution of drinking water.
- (iii) In a public system or facility for the control of stormwater, which may include, the transport, storage and infiltration of stormwater, or costs for the best management practices to address point or nonpoint source pollution associated with stormwater runoff, or other innovative techniques identified in the county-prepared watershed plan under the Storm Water Management Act.

*Regional stormwater facility*—A stormwater facility located at a strategic location in a watershed, generally at the confluence of a stream and its tributaries, to provide optimum detention/retention and water quality benefits.

*Second opinion project review*—A review and evaluation of a project engineering design which shall include the analysis of the basic functions of a facility, system or process and shall identify alternatives, if any, for achieving these basic functions at lower costs or increased revenues. The evaluation shall be conducted by a design engineer or design engineering firm, at the discretion of the applicant. The design engineer or design engineering firm chosen by the

applicant shall be independent of the project engineer and shall be a professional engineer licensed by the Commonwealth.

*Sewerage facilities*—Devices and systems for the storage, treatment, recycling and reclamation of municipal or domestic wastewater or necessary to reliably recycle or reuse water at the most economical cost over the useful life of the works. The term includes intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power, and other equipment and their appurtenances; extensions, improvement, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from treatment, including land for composting sludge and temporary storage of the compost and land used for the storage of treated wastewater in land treatment systems before land application; or another method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste or industrial waste, including waste in combined stormwater and sanitary sewer systems.

*Sewage Facilities Act*—The Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20).

*Sewerage project*—The eligible cost associated with the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or part of a sewerage facility or sewerage system for the collection, treatment or disposal of municipal or domestic wastewater.

*Sewerage system*—An organized method, device or technique considered as an operable unit for preventing, abating, reducing, collecting, storing, conveying, treating, separating or disposing of municipal or domestic wastewater, including waste in combined stormwater and sanitary sewers.

*Stormwater*—Drainage runoff from the surface of the land resulting from precipitation or snow or ice melt.

*Stormwater facility*—A structure to capture, hold, treat or convey stormwater runoff to reduce peak rates or volumes of runoff or enhance water quality, or both.

*Storm Water Management Act*—35 P. S. §§ 680.1—680.17.

*Stormwater system*—A group of stormwater facilities considered an operating unit to reduce peak rates or volumes of stormwater runoff or enhance water quality, or both.

*Useful life*—The period of time for which a facility operates and serves its intended purpose.

*User*—A single connection to a system.

*Wastewater project*—An industrial wastewater project or a sewerage project.

*Water Facilities Loan Board*—The board established under 32 Pa.C.S. § 7504 (relating to Water Facilities Loan Board).

*Water facility*—A part of a water system used for collection, treatment, storage or distribution of drinking water.

*Water project*—The eligible cost associated with the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or part of a facility or system whether publicly or privately owned for the supply, treatment, storage or distribution of water for human consumption.

*Watershed*—The entire region or area drained by a river or other body of water, whether natural or artificial.

*Water system*—A system which provides water to the public for human consumption which has at least 15 service connections used by year-round residents or regularly serves at least 25 of the same persons over 6 months per year. The term includes collection, treatment, storage and distribution facilities under control of the operator of the system and used in connection with the system. The term includes collection or pretreatment storage facilities not under such control which are used in connection with the system.

**Source**

The provisions of this § 963.1 amended July 7, 1995, effective July 8, 1995, 25 Pa.B. 2720; amended November 21, 1997, effective November 22, 1997, 27 Pa.B. 6080. Immediately preceding text appears at serial pages (197551) to (197554).

**§ 963.2. Purpose.**

This chapter establishes procedures and criteria for the awarding of financial assistance under the act.

**§ 963.3. Scope.**

This chapter applies to owners and operators of water, wastewater or stormwater facilities who apply for financial assistance under the act for the acquisition, construction, improvement, expansion, repair or rehabilitation of water, wastewater or stormwater systems.

**Source**

The provisions of this § 963.3 amended July 7, 1995, effective July 8, 1995, 25 Pa.B. 2720. Immediately preceding text appears at serial page (136455).

**§ 963.4. Applicant eligibility.**

(a) An owner or operator of a facility or system for the collection, treatment or disposal of wastewater, including industrial wastewater, or an owner or operator of a facility or system for the collection, treatment, storage or distribution of drinking water, is an eligible project sponsor and may apply for financial assistance. The owner or operator shall be a public or private entity, including a person, corporation, partnership, association, municipal authority or governmental unit who has legal and financial responsibility for the project during the term of the financial assistance provided by the Authority.

(b) If the applicant is a lessee or operator, the applicant shall apply jointly with the facility or system owner for financial assistance.

(c) A municipality that is not an owner, operator or lessee may sponsor a project and apply for financial assistance from the Authority if the following conditions are met:

(1) The applicant pledges sufficient collateral, provides sufficient guarantees or otherwise makes financial provisions to assure the Authority, to its satisfaction, that a loan it makes to the applicant will be repaid or that a loan or bond guarantee it provides the applicant will not be compromised.

(2) The applicant enters into agreements with the operator of the project being financed by the Authority and a larger system of which it is a part, to assure the competent, professional operation of the project and system, as well as compliance with section 10(j) of the act (35 P. S. § 751.10(j)) as implemented in § 963.19 (relating to continuing education of system operators).

#### **§ 963.5. Financial assistance criteria.**

(a) The Board will consider the following criteria when considering applications for financial assistance:

(1) Whether the project will improve the health, safety, welfare or economic well being of the people of this Commonwealth.

(2) Whether the proposed project will lead to an effective or complete long-term solution to the problems experienced with the water supply, sewage treatment or stormwater system to be aided, including compliance with State and Federal statutes, regulations or standards.

(3) The cost-effectiveness of the proposed project in comparison with other alternatives, including other institutional, financial and physical alternatives, known to the Board at the time of its funding decision.

(4) The consistency of the proposed project with other State and regional resource management and economic development plans. These plans may include the State Water Plan, the official sewage plan for the area served adopted under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20), the Comprehensive Water Facilities Plan, when available and the State's Economic Development Strategy.

(5) Whether the applicant has demonstrated its ability to operate and maintain the project in a proper manner.

(6) Whether the project encourages consolidation of water or sewer systems if the consolidation would enable the customers of the systems to be more effectively and efficiently served.

(7) Whether a stormwater project is sponsored by more than one municipality and is located at strategic locations determined by the basin-wide studies undertaken under the Storm Water Management Act, or other joint municipal or county efforts.

(8) The availability of other sources of funds at reasonable rates to finance all or a portion of the project and the need for Authority assistance to finance the project or to attract the other sources of funding. The Board may require the applicant to participate in financing a project when it determines that the applicant has the financial capability to do so. The extent of applicant participation in financing a project and the reasonableness of interest rates on alternative sources of financing will both be determined by the effect that a project's financing will have on user rates, relative to users' ability to pay. To the extent that data availability permits, the Authority will consider the relationship between an applicant's projected user rates and ability to pay and compare it with systems in comparable socio-economic circumstances. Comparisons will be made separately for sewerage systems, water systems and stormwater systems.

(9) A project will not be considered for financial assistance which will have a detrimental impact on the Commonwealth's air, land or water, or on the natural scenic, historic or aesthetic values of the environment, unless the environmental harm can be satisfactorily mitigated.

(b) In making comparisons between systems, the Authority recognizes that projects funded by the Authority may entail higher costs for users than those paid by other users in comparable socio-economic circumstances. Reasons for these cost differences could include improved services provided by the new project and construction cost increases that occur over time and that lead to cost differences among projects built at different times.

#### Source

The provisions of this § 963.5 amended July 7, 1995, effective July 8, 1995, 25 Pa.B. 2720. Immediately preceding text appears at serial pages (136456) to (136457).

#### Cross References

This section cited in 25 Pa. Code § 963.18 (relating to project implementation and reporting).

### § 963.6. Funds and accounts.

(a) The Authority may establish separate funds and accounts, under section 5(c) of the act (35 P. S. § 751.5(c)).

(b) On an annual basis, the Board will adopt a budget which will include an estimate by fund and account of monies anticipated to be available to the Authority during the fiscal year and monies anticipated to be committed for projects during the fiscal year.

(c) The Authority will establish the Water Pollution Control Revolving Fund to receive funds under section 603 of the Water Quality Act of 1987 (33 U.S.C.A. § 1383).

**§ 963.7. Application procedure.**

(a) A potential applicant shall first participate in a planning consultation with the Department's Project Engineer serving the potential applicant's county. The purpose of the planning consultation is to:

- (1) Discuss relevant water supply, wastewater abatement and stormwater management needs.
- (2) Perform a prefeasibility assessment to identify and screen alternative solutions, including opportunities for consolidating water systems and other institutional alternatives.
- (3) Examine alternative funding sources.
- (4) Discuss procedures and information needed to complete the application and implement the project.

(b) The Department's Project Engineer will follow up the planning consultation with a report sent to the potential applicant describing the meeting contents and decisions reached.

(c) A wastewater project shall meet the planning requirements described in Chapter 71 (relating to administration of sewage facilities program). If the potential applicant is a municipality or municipal authority, it shall prepare or update its Official Sewage Plan under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20). If the potential applicant is a private entity, it shall ensure that its facility is included in the Official Sewage Plan prepared by the municipality in which its wastewater facility is located.

(d) An application shall be made on forms acceptable to the Authority and shall be addressed to the Authority.

(e) A complete application shall be received by the Authority administrative staff by the application cutoff date associated with each regular meeting. The application cutoff dates will be established and published at the same time as the regular meeting schedule for the fiscal or calendar year is established, under the Sunshine Act (65 P. S. §§ 271—286). The application cutoff date can be waived by the Board if the project addresses an emergency situation which threatens public health or safety, or the project makes possible an economic development project resulting in retention of existing jobs or the creation of new jobs where the opportunity may be lost without prompt Authority action. The Authority will seek independent confirmation from the Department or the Pennsylvania Emergency Management Agency that a public health or safety emergency does exist, or will seek independent confirmation from the Department of Commerce that an economic development opportunity will be lost without Board action.

(f) An application received by the Authority will be reviewed by the administrative staff for completeness and eligibility. Substantive issues affecting material elements of an applicant's project shall be resolved to the Authority's satisfaction at the time of the Authority Board meeting. An application shall include a statement of the status of the permits necessary for the construction and opera-



tion of the proposed project which can be obtained prior to construction. For projects which include acquisition, permits are not required until the applicant has the legal authority to submit applications to receive those permits. Construction may not begin until the required permits are in place and written permission is obtained from the Authority.

(g) An application determined to be eligible and complete by the administrative staff will be logged in the order of final receipt by the Authority, and will be dated and forwarded to the Department and the Department of Commerce for review.

(h) If the administrative staff determines an application is ineligible or incomplete, it will provide the applicant with a written explanation of the reasons for the determination.

(i) If an application is determined to be ineligible by the administrative staff, the Board will review the decision if the applicant files a written request with the Authority within 30 days of receipt of the determination.

(j) The Department and the Department of Commerce will provide the administrative staff with a written evaluation of each application. The evaluation by the Department of Commerce will address the economic development criterion while the Department evaluation will address other criteria contained in §§ 963.8 and 963.9 (relating to wastewater project evaluation criteria; and water project evaluation criteria).

(k) The administrative staff will provide to the Authority prior to each regularly scheduled Board meeting a written evaluation of each application based upon the criteria in section 10 of the act (35 P. S. § 751.10), including a recommendation to accept, deny or defer. The administrative staff shall provide a recommendation on the amount, types and terms of the financial assistance.

(l) The administrative staff shall provide notice to each applicant, in writing, advising it of the meeting at which its application will be considered.

(m) Following each Board meeting, applicants will be notified in writing of the action taken on their applications.

(n) The fundamental objectives that will guide project selection are long-term improvements to public health, public safety and the environment. Performance on other criteria will also influence project evaluations and selection. Sections 963.8 and 963.9 contain the general criteria that will be used in evaluating projects, and specific examples of performance in each of these criteria.

#### Source

The provisions of this § 963.7 amended July 7, 1995, effective July 8, 1995, 25 Pa.B. 2720. Immediately preceding text appears at serial pages (136458) to (136459).

#### Cross References

This section cited in 25 Pa. Code § 963.13 (relating to advance funding).

#### 963-9

(239795) No. 280 Mar. 98

**§ 963.8. Wastewater project evaluation criteria.**

The following are wastewater project evaluation criteria:

- (1) *Public health and safety.*
  - (i) Direct human impact due to onlot system malfunctions or inadequately treated sewage.
  - (ii) Severity of individual or public water supply contamination.
  - (iii) Degree of impact on public bathing areas.
  - (iv) Severity of safety hazards from deteriorated facilities.
- (2) *Environmental impact.*
  - (i) Damage to fish and aquatic life.
  - (ii) Loss of boating and recreation opportunity.
  - (iii) Impact on industrial water supply uses.
  - (iv) Impact on crop irrigation.
  - (v) Degradation of streams used for stock watering.
  - (vi) Reduction in pollution required in section 117 of the Water Quality Act of 1987 (33 U.S.C.A. § 1267), known as the Chesapeake Bay Agreements.
- (3) *Economic development.*
  - (i) Development activity and job creation/retention resulting directly or indirectly from the project.
  - (ii) Opportunity to use other State programs, such as the Business Infrastructure Development, Site Development and Community Facilities programs, to fund the project.
  - (iii) Degree of local distress in the county where the project is located.
- (4) *Compliance.*
  - (i) Enforcement status of the project.
  - (ii) Existence of overload conditions.
- (5) *Adequacy, efficiency and social impact.*
  - (i) Extent that reorganization or consolidation of facilities will be accomplished.
  - (ii) Population directly affected.
  - (iii) Median household income in comparison to Statewide median.
  - (iv) The ongoing ability of the applicant to operate and maintain the project facilities and system.
  - (v) An increase in the reliability of service.
  - (vi) Efficiency of the proposed solution when compared with other alternatives.

**Cross References**

This section cited in 25 Pa. Code § 103.5 (relating to preparation of project lists); 25 Pa. Code § 963.7 (relating to application procedure); and 25 Pa. Code § 963.11 (relating to eligible costs).

**§ 963.9. Water project evaluation criteria.**

The following are water project evaluation criteria:

- (1) *Public health.*
  - (i) Elimination of an ongoing public health hazard.
  - (ii) Elimination of a periodic or potential health hazard.
  - (iii) Preventive maintenance—related to health hazards.
- (2) *Public safety.*
  - (i) Elimination of an ongoing safety hazard.
  - (ii) Elimination of a periodic or potential safety hazard.
  - (iii) Preventive maintenance—related to safety hazards.
- (3) *Economic development.*
  - (i) Development activity and job creation/retention resulting directly or indirectly from the project.
  - (ii) Opportunity to use other State programs, such as the Business Infrastructure Development, Site Development and Community Facilities programs, to fund the project.
  - (iii) Degree of local distress in the county where the project is located.
- (4) *Compliance-improvement in water system compliance.*
- (5) *Environmental and social impact.*
  - (i) Beneficial environmental and social impacts.
  - (ii) Beneficial environmental impact only.
  - (iii) Beneficial social impact only.
- (6) *Adequacy and efficiency.*
  - (i) Increase in availability of water, consolidation of systems, water conservation or improvement in aesthetic water quality.
  - (ii) The ongoing ability of the applicant to operate and maintain the project facilities and system.
  - (iii) An increase in the reliability of service.
  - (iv) Efficiency of the proposed solution when compared with other alternatives.

**Cross References**

This section cited in 25 Pa. Code § 963.7 (relating to application procedure); and 25 Pa. Code § 963.11 (relating to eligible costs).

**§ 963.9a. Stormwater project evaluation criteria.**

The following are stormwater project evaluation criteria:

- (1) *Public health and safety.*
  - (i) Elimination of critical ongoing safety or health hazard.
  - (ii) Elimination of a chronic safety or health hazard which frequently occurs.
  - (iii) Elimination of a potential safety or health hazard associated with periodic flooding.

(2) *Environmental impact.*

(i) The improvement or prevention of a problem to the environment or to natural resources.

(ii) Whether the project is located in areas of karst topography and susceptible to sinkhole development or has no natural watercourse within the municipal boundaries encompassing the project.

(3) *Economic development.*

(i) Development, activity and job creation retention resulting directly or indirectly from a project.

(ii) Opportunity to use other State programs, such as the Business Infrastructure Development, Site Development and Community Facilities Programs, to fund the project.

(iii) Degree of local distress in the county where the project is located.

(4) *Compliance.*

(i) Improvement of compliance with existing laws, rules and regulations if compliance will eliminate the necessity to issue an order.

(ii) Compliance with law, an order, decree, agreement or a deadline specified in regulation.

(5) *Adequacy and efficiency.*

(i) The extent that the project proposes facility regionalization or system consolidation to improve operation, maintenance or function of the stormwater facility.

(ii) The extent that the project involves multiple-governmental participation.

(iii) The extent that the project has a sponsoring municipal entity which has a population less than or equal to 12,000 residents as reported in the latest census.

**Source**

The provisions of this § 963.9a adopted July 7, 1995, effective July 8, 1995, 25 Pa.B. 2720.

**§ 963.10. Approval of applications: priority of loans.**

(a) At each regularly scheduled meeting, the Board will approve, deny or defer each application presented at the meeting.

(b) The deferral of an application will not have an effect on its priority or ranking at a subsequent Board meeting.

**§ 963.11. Eligible costs.**

(a) In addition to the costs eligible for assistance enumerated in the act, eligible project costs considered by the Board include the following:

(1) Project design and engineering incorporated in the final project, including the development of prefeasibility, feasibility and planning studies, plans, specifications, cost estimates, surveys, project inspection and management and

costs associated with the completion of a second opinion project review required under § 963.20 or § 965.7 (relating to second opinion project review).

(2) Financial condition and audit reports required for financial assistance application.

(3) Administrative costs, including financial reporting costs, generated by the project and specifically included in the financial assistance agreement. These costs include the cost associated with completing the application itself.

(4) Acquisition of property rights, including that of necessary easements or rights-of-way, and equipment that are preliminary to or a necessary part of the project. Acquisition of property rights may include the costs associated with the acquisition, including taxes, fees, surveys, title insurance and relocation fees specifically included in the financial assistance agreement.

(5) Capital contributions to be paid by the applicant for the use of existing treatment, storage, distribution or related capacity. Section 963.17 (relating to funding limitations) applies to the payment of capital contributions. In particular, capital contributions paid prior to approval by the Authority, and in the absence of a letter of no prejudice issued by the Authority, will not be considered eligible costs. Capital contributions are eligible costs only when the following conditions are met:

(i) The use of the capacity by the applicant is either acquired for the life of the capacity or is leased for a sufficiently long period and with rights and privileges as to be tantamount, in the Authority's judgment, to acquisition.

(ii) The price charged for the capacity does not exceed the sum of the following:

(A) The applicant's proportionate share of the unpaid principal of a debt incurred to finance construction of the capacity. The applicant's proportionate share equals the percentage of the existing capacity that the applicant is acquiring or leasing.

(B) Costs incurred by the capacity's owner to modify the capacity to make it available for the applicant's use.

(iii) The financing of capital contributions by the authority does not result in rate reductions to existing users beyond those attributable to the mere spreading of common costs over a larger number of users, comprised of existing users and those represented by the applicant.

(iv) If the capacity being acquired or leased is already in use, the evaluation of the project under the criteria in §§ 963.8 and 963.9 (relating to wastewater project evaluation criteria; and water project evaluation criteria) is on a net benefit basis. Only benefits that are in excess of the benefits already being generated by use of the capacity shall be counted in evaluating the project.

(v) The financing of capital contributions by the authority neither directly nor indirectly jeopardizes a source of authority funds. In particular, that portion of a capital contribution financed by the Authority equal to the unpaid principal of a tax-exempt debt incurred to finance construction of the capacity shall be used to retire that debt.

(vi) The financing of capital contributions by the authority does not directly or indirectly duplicate the assistance provided by the Authority for a project.

(6) Legal service fees generated by the project.

(7) Permit fees.

(8) Insurance or bonds associated with the construction of the project.

(9) Security bonds, necessary reserves and costs of establishing and securing total financing arrangements for the project.

(10) Interest during construction or financing of the project and allowance for funds used during construction.

(11) Project construction, including labor, materials, machinery, equipment, site preparation and restoration costs associated with the project.

(12) Other costs the Board has determined to be necessary or incident to the project. The applicant shall demonstrate that the activities associated with these costs are integral to the proposed project and that the costs are unavoidable.

(b) Eligible costs incurred prior to an application being considered by the Board may be reimbursed in assistance provided by the Board, except that acquisition and construction costs are not reimbursable unless the applicant obtains a letter of no prejudice under § 963.17(b).

(c) Funds encumbered or advanced for the project which are not used for eligible costs in the project shall be returned to the fund or account from which they originated for reallocation and use in other projects.

#### Source

The provisions of this § 963.11 adopted February 24, 1989, effective February 25, 1989, 19 Pa.B. 771; amended May 3, 1991, effective May 4, 1991, 21 Pa.B. 2006; amended July 7, 1995, effective July 8, 1995, 25 Pa.B. 2720; amended November 21, 1997, effective November 22, 1997, 27 Pa.B. 6080. Immediately preceding text appears at serial pages (197562) to (197564).

#### Cross References

This section cited in 25 Pa. Code § 963.12 (relating to ineligible costs).

### § 963.12. Ineligible costs.

(a) *Sewerage*. The following activities conducted in conjunction with sewerage project development and construction are not eligible for financial assistance:

(1) Costs of acquisition or construction of interior plumbing and that portion of house laterals that is neither owned by, nor the responsibility of, the applicant wastewater system.

(2) Projects that have not secured planning and permit approvals under Chapters 71, 91 and 92 (relating to administration of sewage facilities planning program; general provisions; and National Pollutant Discharge Elimination System permitting, monitoring and compliance).

(3) Costs associated with the purchase of land that is not a component in the collection process or the physical, biological or chemical treatment process or are costs which would not qualify as “eligible costs” under § 963.11(a)(4) (relating to eligible costs).

(4) Legal or professional fees associated with litigation of a Commonwealth enforcement action.

(5) Costs associated with replanning or redesign subsequent to loan approval except where unforeseeable site conditions discovered during construction require replanning or redesign. The applicant/borrower shall demonstrate to the Authority that extensive effort was made in examining site conditions before planning and design were finalized. The Authority may also approve replanning or redesign costs if the replanning or redesign would result in cost savings sufficient, in the Authority’s judgment, to justify those costs.

(6) Costs associated with the development of an approvable official sewage plan under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20).

(7) Costs associated with the extraction for profit of minerals or other resources from wastewater or sludges unless, in the case of public facilities, the profits from the extraction will be used solely to reduce system user costs.

(b) *Industrial wastewater.* The following activities conducted in conjunction with industrial wastewater project development and construction are not eligible for financial assistance:

(1) Costs of acquisition or construction of interior plumbing.

(2) Projects which have not secured planning and permit approvals under Chapters 91 and 92.

(3) Costs associated with the purchase of land that is not a component in the collection process or the physical, biological or chemical treatment process or costs which would not qualify as eligible costs under § 963.11(a)(4).

(4) Legal or professional fees associated with litigation of a Commonwealth enforcement action.

(5) Costs associated with replanning or redesign subsequent to financial assistance approval except where unforeseeable site conditions discovered during construction requires replanning or redesign. The applicant/borrower shall demonstrate to the Authority that extensive effort was made in examining site conditions before planning and design were finalized.

(6) Costs associated with the extraction for profit of minerals or other resources from wastewater or sludges.

(c) *Water systems.* The following activities conducted in conjunction with water project development and construction are not eligible for financial assistance:

- (1) Projects or those portions of projects not related to a water system.
- (2) Costs of acquisition or construction of interior plumbing and fixtures.
- (3) Costs associated with the purchase of land that is not a component in the collection, treatment or distribution process; or are costs which would not qualify as eligible costs under § 963.11(a)(4).
- (4) Legal or professional fees associated with litigation of a Commonwealth enforcement action.
- (5) Projects for water systems which are not in compliance with requirements established under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) unless the purpose of the project is to bring the water system into compliance.

(6) Costs associated with replanning or redesign subsequent to loan approval except where unforeseeable site conditions discovered during construction require replanning or redesign. The applicant/borrower shall demonstrate to the Authority that extensive effort was made in examining site conditions before planning and design were finalized.

(d) *Stormwater projects.* The following costs associated with stormwater projects development are not eligible for financial assistance:

(1) Costs associated with a stormwater project located within a watershed for which a county has not adopted a watershed stormwater management plan, as required by the Storm Water Management Act, shall be ineligible for financial assistance under the act, except that:

(i) Costs associated with a project within a watershed which includes land in more than one county and for which the Department has required that a joint plan for the entire watershed be submitted by the affected counties shall be ineligible for financial assistance under the act only if any county in which the project is located is found to have failed to cooperate in the development of the joint plan.

(ii) A stormwater project specifically designed to maintain or improve, or both, existing water quality and to comply with the National Pollutant Discharge Elimination System (NPDES) stormwater permitting requirements shall be eligible for financial support under the act.

(iii) Costs associated with a project located in a municipality which has enacted a stormwater management ordinance requiring land owners and persons engaged in the alteration or development of land to implement measures to ensure that the maximum rate of stormwater runoff is no greater after the development than prior to development activities or to manage the quantity, velocity and direction of resulting stormwater runoff in a manner which otherwise adequately protects the health and property of residents from the pos-



sibility of injury as required by the Storm Water Management Act shall be eligible for financial support under the act.

(2) Costs associated with a stormwater project located within a municipality which is not implementing ordinances under an existing county-prepared and Department-approved watershed plan.

(3) Costs associated with a project in which work is done within the stream, including activities such as widening/realignment of channel, improvements along banks and bed of the channel and increasing capacity of the channel.

(4) Costs associated with projects or those portions of projects not related to a stormwater system as determined by project staff. The staff determination will be submitted to the applicant in writing.

(5) Costs associated with legal or professional fees directly related to litigation of a Commonwealth enforcement action.

(6) Costs associated with projects for stormwater systems which are not in compliance with the requirements established under the Storm Water Management Act unless the purpose of the project is to bring the stormwater system into compliance.

(7) Costs associated with replanning or redesign subsequent to loan approval except where unforeseeable site conditions discovered during construction require replanning or redesigning. The applicant/borrower shall demonstrate to the Authority that extensive effort was made in existing site conditions before planning and design were finalized. The Authority may also approve replanning and redesign costs if the replanning or redesign would result in cost savings sufficient, in the Authority's judgment, to justify those costs.

#### Source

The provisions of this § 963.12 adopted February 24, 1989, effective February 25, 1989, 19 Pa.B. 771; amended May 3, 1991, effective May 4, 1991, 21 Pa.B. 2006; amended July 7, 1995, effective July 8, 1995, 25 Pa.B. 2720. Immediately preceding text appears at serial pages (159276) to (159277).

### § 963.13. Advance funding.

(a) *Advance funding assistance.* The Authority may make funding available to finance those activities undertaken prior to application for construction financing—for example, feasibility analyses, design and engineering work. Definitions, provisions, restrictions, procedures and authorizations that are enumerated in the act and in this chapter apply in the same manner to advance funding assistance as they do to construction financing assistance, except as modified by subsections (b)—(i).

(b) *Types of assistance.*

- (1) *Drinking water projects.* Advance funding assistance may be available for two separate types of activities, each requiring the submittal of its own application as follows:
- (i) *Feasibility analyses.* Costs associated with prefeasibility and feasibility studies may be funded. Applicants shall complete an Advance Funding Application for Feasibility Analyses to apply for the funding needed to help identify problems, possible solutions, alternative sources of financing, and the like, and to perform related tasks undertaken prior to, but not including, the design and engineering of a potential construction project.
  - (ii) *Design and engineering.* Costs associated with design and engineering work can be funded by financial assistance obtained by completing an Advance Funding Application for Design and Engineering. Eligible costs include those incurred between the point of completing a feasibility analysis and the point of applying for construction financing, although prior costs incurred for feasibility analysis may be reimbursed by this financial assistance.
- (2) *Wastewater projects.* Advance funding will be available only for design and engineering. Costs incurred prior to this will not be eligible for financing by advance funding as long as 50% grants remain available for reimbursing costs incurred under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20).
- (3) *Stormwater systems.*
- (i) *Feasibility analyses.* Section 963.7(a) and (b) (relating to application procedure) applies. After the tasks described in § 963.7(a) and (b) are complete, an applicant may submit to the Authority an Advance Funding Application for Feasibility Analyses.
  - (ii) *Design and engineering.* Section 963.7(a) and (b) applies. After the tasks described in § 963.7(a) and (b) are complete, an applicant may submit to the Authority an Advance Funding Application for Design and Engineering.
- (c) *Terms of loans.* Advance funding loans will be for a term of up to 5 years. Repayment will begin at the completion of the feasibility analysis or design and engineering work—as applicable—funded by this loan. If the recipient of an advance funding loan subsequently receives a higher level of Authority assistance—for example, for either design and engineering or construction, as applicable—the outstanding balance of the advance funding loan may be subsumed in this assistance and, in the case of a subsequent loan, carry the terms established by that subsequent loan.
- (d) *Funding limitations.* Section 963.17 (relating to funding limitations) applies, with the exception that the applicable funding limits shall be 10% of the amounts specified in § 963.17(f). In other cases, the provisions established pursuant to construction are applicable to feasibility analyses or design and engineering, as is appropriate.

(e) *Total amount of available advance funding assistance.* It will be the Authority's general goal to set aside up to 10% of total available financial assistance for advance funding during a fiscal year. This percentage can be exceeded with an affirmative vote of nine members of the Board.

(f) *Additional requirements for applications.*

(1) *Drinking water systems.*

(i) *Feasibility analyses.* Section 963.7(a) and (b) applies. After the tasks described in § 963.7(a) and (b) are complete, an applicant may submit to the Authority, an Advance Funding Application for Feasibility Analyses.

(ii) *Design and engineering.* Section 963.7(a) and (b) applies. After the tasks described in § 963.7(a) and (b) are complete, an applicant may submit to the Authority an Advance Funding Application for Design and Engineering.

(2) *Wastewater systems.* Section 963.7(a)—(c) applies. After the tasks described in § 963.7(a)—(c) are complete, an applicant may submit to the Authority an Advance Funding Application for Design and Engineering.

(g) *Continuation of overall project.* A recipient of financial assistance for advance funding shall initiate construction of the proposed project in accordance with the time frames established by the Authority at the time of approval. If the recipient fails to implement the proposed project in accordance with either the original approved time frame schedule or an amended schedule approved by the Authority, funds disbursed to the recipient by the Authority shall immediately be due and payable. The Authority will exercise power it deems necessary or appropriate under section 6 of the act (35 P. S. § 751.6) to effectuate the repayment of these amounts.

(h) *Effect of advance funding assistance.* The awarding of advance funding assistance will not have an effect on the priority or ranking of subsequent applications submitted by the recipient for higher levels of Authority assistance.

(i) *Limitation.* Advance funding assistance will not be made available that might jeopardize or compromise a source of Authority funds.

#### Source

The provisions of § 963.13 amended July 7, 1995, effective July 8, 1995, 25 Pa.B. 2720. Immediately preceding text appears at serial pages (159278) to (159279) and (136467).

### § 963.14. Grants.

(a) A grant will be considered only when the Board determines that the financial condition of the recipient indicates that repayment of a loan is unlikely and that the recipient will not be able to proceed with the project without a grant. If the Board decides to award a grant, the Board will attempt to mix the grant funds with loan funds.

(b) In determining whether a grant should be offered, and, if so, what proportion of the financial assistance offered should constitute a grant and what portion

should constitute a loan, the Board will consider the ultimate effect that financing a project's costs will have on the rates that customers will have to pay. A rate increase will be compared with local incomes and ability to pay in assessing the need for a grant. In doing this assessment, the Board may consider factors including, but not limited to, the following:

- (1) The median household income of the system's service area.
  - (2) Existing and projected user fees.
  - (3) The financial condition of the applicant, including revenues, expenses, debt structure, equity position, available collateral and financial condition of an owner or parent organization.
  - (4) The social, economic and financial condition of the community served by the project in comparison with communities in similar socio-economic circumstances.
  - (5) The inability of the applicant to secure grant funding from other sources.
- (c) The Board may limit individual grant awards to whatever amount it deems desirable.
- (d) A grant will be made subject to terms and conditions the Board establishes.

#### **§ 963.15. Loans.**

- (a) The term of loans shall normally be 20 years from the day the loan agreements are executed. The Board may specify different terms in cases that it deems necessary or desirable to do so.
- (b) The borrower shall pay interest at the determined rate on funds disbursed during construction. Upon completion of the project and its acceptance by the Board, or upon 3 years from the date the loan agreements are executed, whichever comes first, payments of principal and interest shall become due and payable upon an amortization schedule to be established by the Board. The Board may defer the initiation of the repayment of principal up to 5 years from the date the loan agreements are executed. The borrower may begin principal and interest payments sooner than required here, if it so chooses.
- (c) The minimum rate of interest to be paid on a loan is 1%. The maximum rate of interest may not exceed the following:
- (1) For projects in counties where the unemployment rate exceeds the Statewide unemployment rate by 40% or more, 1% for the first 5 years and 25% of the bond interest rate for the remainder of the loan.
  - (2) For projects in counties where the unemployment rate exceeds the Statewide unemployment rate, but exceeds it by less than 40%, 30% of the bond interest rate for the first 5 years and 60% of the bond interest rate for the remainder of the loan.
  - (3) For other projects, 60% of the bond interest rate for the first 5 years and 75% of the bond interest rate for the remainder of the loan.

(4) For projects within municipalities for which unemployment rates exist which would qualify the project for lower interest rates than if the relevant county unemployment rates were used, the unemployment rate of that municipality may be used in determining the interest rate on the loan.

(5) As used in this subsection, “unemployment rate of the county” means the average unemployment rate for the county in the most recent calendar year for which data have been finalized. For the projects which serve multiple counties, the highest unemployment rate of the counties involved shall be used. The unemployment data utilized shall be data reported by the Department of Labor and Industry.

(6) As used in this subsection, “bond interest rate” means the rate of interest paid by the Commonwealth immediately preceding the date of the loan for the general obligation bonds used to finance the loan.

(d) In establishing the interest rate of a loan, the Board will consider the ultimate effect that financing a project’s costs will have on the rates that customers will have to pay. A rate increase will be compared with local incomes and ability to pay in determining a loan’s interest rate. In the process of setting an interest rate, the Board may consider factors including, but not limited to, the following:

(1) The current market interest rate.

(2) The financial, social and economic condition of the area served by the project in comparison with communities in similar socio-economic circumstances.

(3) The financial condition of the applicant.

(4) The median household income in the system’s service area.

(5) Historical, existing and projected user fees.

(6) The financial condition of the Authority and the necessity to maintain the Authority’s funds in a financially sound manner.

(e) A loan will be made subject to terms and conditions the Board establishes.

(f) A loan made to a governmental unit is subject to the Local Government Unit Debt Act (53 P. S. §§ 6780-1—6780-609).

#### § 963.16. Other forms of assistance.

The Authority may provide other forms and methods of assistance in addition to loans and grants, as provided in section 10(h) of the act (35 P. S. § 751.10(h)). Other forms and methods include, but are not limited to, bond and loan guarantees and the purchase or insurance of bonds.

#### § 963.17. Funding limitations.

(a) *Refinancing.*

(1) As provided in section 10(m) of the act (35 P. S. § 751.10(m)), financial assistance will not be available for refinancing of a project, except that the Water Pollution Control Revolving Fund may be used to the extent authorized

by the Water Quality Act of 1987 (33 U.S.C.A. §§ 1251—1387; 1414a) for a project commenced after March 7, 1985.

(2) The provision of financial assistance by the Authority will be prohibited under this section when one of the following conditions applies for an applicant's project:

(i) Construction is initiated prior to the time that application to the Board for financial assistance is approved, and, except as otherwise provided in subsection (b) or (h), a Letter of No Prejudice has not been issued by the Authority.

(ii) The applicant has adequate long-term financing in place prior to initiation of construction, and completion of the project with this financing will result in reasonable user rates, relative to the project users' ability to pay, and the rates paid by users of systems in comparable socio-economic circumstances.

(3) For purposes of this section, the term "long-term financing" excludes a credit accommodation—including a loan, line of credit, bond financing or other credit facility—which:

(i) Has a final maturity date not exceeding the later of one of the following:

(A) Five years from the date the credit accommodation was consummated.

(B) Six months following the anticipated completion of construction, as evidenced by a certificate of the consulting engineer to the applicant or other evidence acceptable to the Authority.

(ii) Can be prepaid by the applicant on or before a date which is not later than 90 days following the date upon which the financial assistance is provided by the Authority.

(b) *Letters of No Prejudice.*

(1) Exceptions to the general prohibition against initiation of construction prior to consideration by the Board may be made when a project is required to proceed before an application for financial assistance can be approved by the Board. In this case, a potential applicant may apply to the Authority for a Letter of No Prejudice, wherein the Authority agrees to consider a future application for financial assistance without limitation or prejudice even if project construction has begun at that time. If the Authority issues a Letter of No Prejudice, project construction can begin without jeopardizing or benefiting a future application.

(2) A Letter of No Prejudice may be granted by the Authority if a project is required to be initiated to accomplish one of the following:

(i) Comply with a State or Federal regulatory order; for example, a Department Consent Order and Agreement.

(ii) Attend to some demonstrable public health or safety emergency.

(iii) Make possible an economic development project resulting in retention of existing jobs or the creation of new jobs where the opportunity may be lost because of delay.

(3) The Authority will seek independent confirmation from the Department or other appropriate State or Federal agencies that a public health or safety emergency justifying issuance of a Letter of No Prejudice does in fact exist. The Authority will seek similar confirmation from the Department of Commerce regarding the possible loss of an economic development opportunity.

(c) *Partial funding.*

(1) The Authority reserves the right to provide funding for only a portion of the total costs of a project or only a portion of the amount requested in a financial assistance application. Partial funding will be considered when the Authority's ability to pay analysis indicates that a project's user fees, relative to ability to pay, would be below those of systems in comparable socio-economic circumstances when the amount of assistance requested in an application is financed at the maximum interest rates defined in section 10(f) of the act. In that case, the amount of assistance provided by the Authority will be reduced below that requested by the applicant until resulting user rates are equivalent to those systems in comparable socio-economic circumstances.

(2) The Authority may also provide only partial funding when it determines that action is necessary to protect the Authority's financial integrity.

(d) *Alternative sources of financing.*

(1) An applicant shall explore possible sources of financing for the proposed project before applying to the Authority. The Authority will continue to encourage and assist even a successful applicant to seek alternative resources of financing to supplement financing provided by the Authority.

(2) The extent to which the Authority will require an applicant to rely on available alternative financing will depend upon the effect this financing has on user rates, relative to a project users' ability to pay and in relation to systems in comparable socio-economic circumstances. This evaluation shall apply to financing secured by an applicant prior to initiation of the application process, as well as financing secured thereafter.

(e) *Other forms of assistance.* As provided in section 10(h) of the act, the Authority may make full use of other forms of assistance to applicants, in addition to providing loans and grants. This alternative assistance can include bond and loan guarantees and the purchase of bond insurance.

(f) *Total funding limits.* Total assistance to a single project will not total more than \$11 million or \$20 million if a project serves more than one municipality, except that the Board by an affirmative vote of at least nine members may authorize loans in excess of \$20 million to comprehensive projects providing or proposing consolidated services to a region encompassing all or parts of four or more municipalities.

(g) *Limitation.* Financial assistance will not be made available that might jeopardize or compromise a source of Authority funds.

(h) *Limited exception.* Failure by an applicant to request a Letter of No Prejudice prior to initiating construction of a project will not render a subsequent application for financial assistance to the Authority ineligible if the following conditions apply:

(1) The construction was initiated between the dates of March 1, 1988, and February 25, 1989.

(2) The applicant would have otherwise qualified for a Letter of No Prejudice under this chapter.

#### Authority

The provisions of this § 963.17 amended under the Pennsylvania Infrastructure Investment Authority Act (35 P. S. §§ 751.1—751.20).

#### Source

The provisions of this § 963.17 adopted February 24, 1989, effective February 25, 1989, 19 Pa.B. 771; amended October 26, 1990, effective October 27, 1990, 20 Pa.B. 5425; amended July 7, 1995, effective July 8, 1995, 25 Pa.B. 2720. Immediately preceding text appears at serial pages (151744) and (171139) to (171140).

#### Cross References

This section cited in 25 Pa. Code § 963.11 (relating to eligible costs); 25 Pa. Code § 963.13 (relating to advance funding); and 25 Pa. Code § 965.4 (relating to eligible costs).

### § 963.18. Project implementation and reporting.

(a) For each project approved by the Board, the administrative staff will develop financial assistance documents which will, among other things, define the terms and conditions under which the financial assistance is offered, the project management plan, project cost breakdown, project scope and other legal documents determined to be necessary by the Authority.

(b) Before beginning construction work, the applicant and its engineer shall confer with the Department project engineer to confirm the scope and schedule of the project and schedule periodic inspections by the Department. The applicant shall begin construction of the project, in accordance with its application, within 12 months of approval by the Board. If the applicant does not begin implementation within 12 months and continue work without unreasonable interruption, the financial assistance may be withdrawn by the Board.

(c) The applicant may not deviate from the scope, approved design or time schedule for a project unless written approval is given by the Authority.

(1) *Scope changes.*

(i) If the deviation or change involves one or more of the following it is considered a scope change:



- (A) An increase or decrease in the scale of a project that results in either more or fewer people being served.
  - (B) A change in process that uses a different method to achieve the same result.
  - (C) Performing a different function within a project.
- (ii) Scope changes shall be submitted in writing to the Authority for review and approval, whether they result in a change to an existing contract or not. Failure to do so may jeopardize funding.
  - (iii) Funding for scope changes will be approved only in the following circumstances:
    - (A) The change in scope is a result of new or revised State or Federal requirements, not in effect at the time the application was approved for funding by the Board, and enacted prior to the scheduled conclusion of construction as presented to the Authority in the Applicant's original Organization and Management Plan.
    - (B) The change in scope is necessary to protect the structural or process integrity of the facilities.
    - (C) Adverse conditions are identified during the construction of the facilities which could not have been foreseen by the design engineer prior to encountering the condition. The applicant/borrower shall demonstrate to the Board that extensive effort was made in examining site conditions before planning and design were finalized.
    - (D) The change is necessary to relieve emergency conditions occurring during construction of the facilities.
- (2) *Change order.*
    - (i) A deviation or change in the design, construction or time schedule of a project not considered a scope change is a change order.
    - (ii) Change orders shall be submitted in writing to the Authority for review and approval whether they result in a change to an existing contract or not.
    - (iii) If change orders exceed \$25,000 or 2% of the amount of the project's construction cost, whichever is smaller, or the aggregate cost of all change orders of the project exceed 10% of the project's construction cost, written prior approval will be required from the Authority and Department.
  - (3) *Funding eligibility.* Funding eligibility for scope changes and change orders will be based on the criteria described in section 10 of the act (35 P. S. § 751.10) and § 963.5 (relating to financial assistance criteria).
  - (4) *Consent to changes.* Consent of the Authority to a scope change or change order will not be deemed to increase the amount of financial assistance provided without the express approval of the Board.
  - (5) *Refunds.* The Authority has the right to request a refund for a cost paid by the Authority including a cost of the project, scope changes or change orders which are deemed to be ineligible.

(d) A request for a disbursement of financial assistance shall be on forms approved by the Authority and shall be submitted on a schedule approved by the Authority.

(e) The applicant shall maintain project progress and financial records, to substantiate expenditures and activities shown on the approved Organization and Management Plan and budget for the project.

(f) The applicant shall furnish the Authority with status reports at the Authority's request until the project is completed. The applicant shall also provide the Authority with its annual financial report for each year throughout the repayment period of a loan provided by the Authority.

(g) If the applicant fails to comply with this section, the Authority may withdraw the remaining funds allocated to the project, as well as take other action to which it is legally entitled to take.

#### Source

The provisions of this § 963.18 amended July 7, 1995, effective July 8, 1995, 25 Pa.B. 2720. Immediately preceding text appears at serial pages (151747) to (151748).

### § 963.19. Continuing education of system operators.

(a) An applicant for financial assistance shall include a 5-year operator training plan as part of the assistance application. The operator training plan shall be reviewed and updated at 5-year intervals—or more often if appropriate—and shall be submitted to the Authority for approval within 3 months of the end of each 5-year cycle. The 5-year training plan shall specify the education programs in which identified system operators or supporting staff plan to participate each year. The minimum level of educational topics included in the training plan shall correlate to the classification of the treatment facility being operated.

(b) Education sources to be included in the 5-year training plan may include the following:

(1) Water and wastewater treatment facility operator training courses conducted or certified by the Department of Community Affairs or equivalent courses conducted or approved by the Department.

(2) Appropriate related courses provided by an accredited university or institution or approved by the Department.

(3) Specialty courses, professional seminars or operator outreach training programs conducted or sponsored by State or Federal agencies, organizations such as the Water Pollution Control Federation, the Water Pollution Control Association of Pennsylvania, the American Water Works Association, the American Society of Civil Engineers and the National Rural Water Association.

(4) Reasonable substitutions or modifications may be made to the plan if projected training courses are unavailable or become inappropriate.

(c) Certification or other documentation demonstrating participation in the education programs, as identified in each 5-year training plan, shall be submitted as support to training plan renewals.

(d) Failure to submit, maintain, update or follow the approved operator training plan may result in the Authority ceasing financial assistance and recovering prior payments including, but not limited to, the immediate repayment of outstanding loans and interest and grants.

#### Cross References

This section cited in 25 Pa. Code § 963.4 (relating to applicant eligibility).

### § 963.20. Second opinion project review.

(a) If the total estimated construction cost plus any amount allocated for contingency for a project is greater than \$10 million, the applicant shall have a second opinion project review completed.

(1) Prior to project design, an applicant shall participate in a project consultation with the Department and, if required by this section, shall make plans for a second opinion project review.

(2) An applicant shall provide the Department with a time line indicating the anticipated beginning and end dates of the second opinion project review if a review is required by this section.

(b) An applicant shall meet the following requirements when undertaking a second opinion project review:

(1) The second opinion project review shall be planned for and completed by the time the project design is 20% to 40% complete, unless the applicant requests in writing from the Authority an extension of time due to some reasonable and unforeseen circumstance.

(2) The second opinion project review shall focus primarily on the treatment facilities but shall also include an analysis of the total project design. In either case, the review shall include an evaluation of cost effectiveness, complexity and impact of the project on the community.

(3) Upon completion of the second opinion project review, the reviewer shall provide a written report to the applicant which summarizes findings and describes proposed implementation of recommendations. The written report of the second opinion project review shall be issued under seal of a professional engineer licensed to practice in this Commonwealth.

(4) The applicant shall cause the implementation of the reported recommendations to the maximum extent feasible.

(5) A copy of the second opinion project review shall be submitted to the Authority along with a proposal addressing each recommendation and their incorporation into the project design unless to do so would not be cost effective, reliable or reasonable based upon the delay it would cause in the project or because to do so would cause an unreasonable burden upon a factor critical

to the treatment or collection system and the environmental impact of the project. The copy of the second opinion project review and the applicant's proposal shall be submitted to the Authority within 90-calendar days from the completion of the review.

(i) If the Authority disagrees with the reason set forth by the applicant for not adopting a second opinion project review recommendation, the administrative staff may not recommend approval of financial assistance to the Board for that portion of the project.

(ii) An applicant may appeal the administrative staff's recommendation to the Board, in accordance with 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

(c) The second opinion project review report may be used by the administrative staff in the cost effectiveness evaluation performed during the application review process.

#### Source

The provisions of this § 963.20 adopted November 21, 1997, effective November 22, 1997, 27 Pa.B. 6080.

#### Cross References

This section cited in 25 Pa. Code § 963.11 (relating to eligible costs).

[Next page is 965-1.]