

CHAPTER 965. CLEAN WATER STATE REVOLVING FUND

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Authority

The provisions of this Chapter 965 issued 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 965 adopted November 21, 1997, effective November 22, 1997, 27 Pa.B. 6080, unless otherwise noted.

§ 965.1. Definitions.

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

Ad valorem tax—A tax based on the value of real property.

Affirmative performance certificate—A certification by the borrower 1 year following the date of initiation of operation stating that the wastewater treatment portion of the project is capable of meeting the design specifications and effluent limitations in the NPDES Part I Permit.

CWSRF—Clean Water State Revolving Fund—The funding account established in accordance with the requirements of both the act and the Water Quality Act for the purpose of establishing an environmental infrastructure revolving loan program.

Capital financing plan—A 10-year plan which projects future requirements for wastewater treatment service within the applicant's jurisdiction which includes a description of necessary future expansions or reconstruction for wastewater treatment services, or both, and how this future expansion or reconstruction will be financed.

Corrective action report—A report submitted by the borrower if an affirmative performance certification cannot be provided following the 1-year performance period containing an analysis of the causes of the inability to certify, a schedule for the necessary corrective actions and a date that an affirmative performance certification is expected.

General facilities plan—The plans and studies which directly relate to sewerage facilities and which are needed to comply with the Water Quality Act and The Clean Streams Law.

IUP—Intended Use Plan—A plan identifying the intended uses of the moneys in the CWSRF and describing how those uses support the goals of the CWSRF.

Infiltration—Groundwater entering a sewer system through broken pipes, defective pipe joints or illegal connections of foundation drains.

Inflow—Surface water runoff that enters a sewer system through manhole covers; exposed, broken and defective pipe joints; cross connections between storm sewers and sanitary sewers; and illegal connections of roof leaders, cellar drains, yard drains or catch basins.

Initiation of operation—The date specified by the borrower when the project begins operation for the use for which it was planned, designed and built. The term includes only essential facilities considered functional and does not include nonoperational facilities such as landscaping which may not be or have been completed.

NEPA—The National Environmental Policy Act of 1969 (42 U.S.C.A. §§ 4321—4347)

NPDES permit—A National Pollutant Discharge Elimination System permit. A permit issued by the Department of Environmental Protection 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).

Project priority list—The list of identified public sewerage project needs in this Commonwealth established in accordance with Chapter 103 (relating to financial assistance).

SERP—State Environmental Review Processes—Processes based upon adopted State regulations set forth in Chapters 71, 109, 963 and 965 which include procedures substantially equivalent to a NEPA review, as described by 40 CFR Part 6, Subparts A—E.

Sewer use ordinance—An ordinance or resolution adopted by a governmental unit establishing the requirements for the users of the sewerage facilities. The requirements include:

- (i) The prohibition of new connections from inflow sources.
- (ii) The design and construction of new connections in accordance with local municipal plumbing codes.
- (iii) Wastewater may not contain toxics or pollutants in amounts which endanger public safety or the physical integrity of the sewerage facilities as determined by criteria in 40 CFR Part 403 (relating to general pretreatment regulations for existing and new sources of pollution).
- (iv) The prohibition against violations of effluent limits or water quality limits as outlined in the NPDES permit.

User charge system—The method by which charges are levied on users of sewerage systems, or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of debt service, operation and maintenance (including replacement) of that system. The user's proportionate share shall be based on the ratio of the user's contribution to the total wastewater loading from all users. The user charge system shall also include the following:

- (i) A provision that each user will receive annual written notice of the user rate which may be in the form of a bill or a form satisfactory to the Authority.
- (ii) A provision for a financial management system which will accurately account for revenues and expenditures of the sewer system.

Water Quality Act—The Water Quality Act of 1987 (33 U.S.C.A. §§ 1251—1387).

§ 965.2. Applicability.

(a) This chapter applies to governmental units which own sewerage facilities and which apply for financial assistance for sewerage projects and governmental units or private individuals who are constructing or maintaining nonpoint source projects or estuary protection projects.

(b) Chapter 963 (relating to Pennsylvania Infrastructure Investment Authority Assistance) also applies to this chapter except to the extent it is inconsistent with this chapter.

§ 965.3. Eligibility.

Eligible applicants are governmental units which own or will own sewerage facilities or governmental units and private individuals who are constructing or maintaining nonpoint source projects or estuary protection projects.

§ 965.4. Eligible costs.

Eligible costs include:

- (1) Costs approved by the Board which are necessary for construction of public sewerage facilities.
- (2) Costs approved by the Board which are necessary for construction associated with secondary treatment or advanced treatment, or both.
- (3) Costs approved by the Board which are necessary for construction associated with cost-effective alternatives to secondary treatment or advanced treatment, or both.
- (4) Costs approved by the Board which are necessary for the construction of interceptor sewers.
- (5) Costs approved by the Board which are necessary for construction associated with the correction of an infiltration/inflow problem.

(6) Costs approved by the Board which are necessary for construction associated with the rehabilitation or replacement of collector sewer systems only when the applicant demonstrates that the collector sewer system is necessary to assure the total integrity of the sewerage system.

(7) Costs approved by the Board which are necessary for construction of new collector systems only when the applicant demonstrates that sufficient treatment capacity exists.

(8) Costs associated with the completion of the second opinion project review required under § 965.7 (relating to second opinion project review).

(9) Other eligible costs as defined under § 963.1 (relating to definitions) which are approved by the Board, except that costs associated with the purchase of land for rights of way or easements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C.A. §§ 4601—4655), are not eligible.

(10) Costs associated with the refinancing of local debt incurred after March 5, 1985, only when the applicant demonstrates the following:

(i) The construction started after March 5, 1985, but before March 1, 1988.

(ii) The original debt was incurred to comply with a State or Federal compliance schedule.

(iii) The project has met the requirements of the Water Quality Act.

(iv) The project has undergone an environmental review as required by the Department.

(11) Costs associated with the refinancing of local debt incurred after March 1, 1988, only when the applicant demonstrates that it meets the requirements of § 963.17 (relating to funding limitations).

(12) Costs approved by the Board which are necessary for the implementation of a nonpoint source project or estuary protection project.

§ 965.5. Preapplication procedures.

An applicant may be required to attend a preapplication conference during which financial assistance documents will be identified and explained. This conference will not be considered as part of the formal application procedure and verbal statements made during the conference will not bind the Authority, the Department or the applicant.

§ 965.6. Application procedures.

(a) In addition to the requirements under Chapter 963 (relating to Pennsylvania Infrastructure Investment Authority Assistance), an applicant for sewerage facilities shall also include the following information in the application:

(1) An ordinance or resolution passed by the governmental unit authorizing the filing of the application and identifying the individuals authorized to sign the application and act on behalf of the governmental unit.

(2) Two separate ordinances or resolutions authorizing the governmental units to file an application and designate the governmental unit to be the lead applicant and a draft of an intermunicipal agreement, if two or more governmental units are filing one application.

(3) A written statement that the applicant will comply with applicable Federal and State laws and regulations required for projects funded by the CWSRF.

(4) A comprehensive official sewage plan or update revision developed in accordance with the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20) and Chapter 71 (relating to administration of sewage facilities planning program) and which includes the following requirements of projects funded by the CWSRF:

(i) A written certification that innovative and alternative technologies were considered and evaluated when developing solutions to the applicant's needs.

(ii) A written certification that the applicant had one public meeting before the adoption of its comprehensive official sewage plan.

(5) A written certification that the project is included in the governmental unit's official sewage plan or revision approved by the Department under the Pennsylvania Sewage Facilities Act.

(6) A written certification that the project will comply with the CWSRF program and will undergo the SERP as required by the Department and the Authority.

(7) A copy of permits or approvals necessary for the completion of the project as designed except for permits or approvals which cannot be obtained until construction is started.

(8) A copy of a draft sewer ordinance and a draft ordinance establishing a user charge system.

(9) A copy of a draft engineering agreement for building services.

(10) A copy of the Capital Financing Plan.

(11) Other information which may be required by the Authority to demonstrate the applicant's compliance with the laws of the Commonwealth and to effectuate the purposes of the act and the CWSRF.

(b) In addition to the requirements under Chapter 963, applicants for nonpoint source projects or estuary protection projects shall also include a written certification that the applicant will comply with applicable Federal and State laws and regulations required for projects funded by the CWSRF.

(c) An applicant is not required to supply duplicate copies of information when satisfying the application requirement of this section. The applicant may meet this requirement by referencing another part of the application where this information is being supplied.

(d) The IUP will be prepared by the Authority based upon a proposed annual budget and the project priority list and will contain proposed fundable projects. The IUP will consist of those projects which are expected to be funded. A project

on the IUP may be bypassed when the Authority determines that the project on the approved IUP list is not ready to proceed, the applicant has other funds available at reasonable rates, or the project is ineligible under the act or this chapter. A project from the project priority list may replace a project from the IUP. These projects shall be ready to proceed and also meet the requirements of this chapter.

(e) The IUP may be amended to remove projects which are ineligible or add projects from project priority list.

§ 965.7. 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, the 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) When a second opinion project review is required, applicant shall provide the Department with a time line indicating the anticipated beginning and end dates for the review

(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 from the Authority in writing 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 and shall include an evaluation of the 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 second opinion project review report 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 report shall be submitted to the Authority along with a proposal submitted by applicant discussing each recommendation and its incorporation in the project design except when to do so would be cost ineffective or unreliable or would cause unreasonable delay in the project or would result in some other unreasonable burden upon a factor critical to the treatment or collection system and the environmental impact of the project. The second opinion project review and the proposal shall be sub-

mitted by the applicant to the Authority within 90-calendar days following the completion of the second opinion project 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 Board recommendation of the administrative staff 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.

Cross References

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

§ 965.8. Terms of financial assistance.

Financial assistance from the CWSRF shall be in the form of loans and the loans may not be longer than the term permitted by section 603(d)(1)(A) of the Water Quality Act (33 U.S.C.A. § 1383(d)(1)(A)).

§ 965.9. Loan conditions.

(a) The borrower shall certify in writing that it has the legal, institutional and financial capability to implement the project over its entire design life. For sewerage facilities, this certification shall include the following:

(1) A certified copy of its sewer use ordinance which shall be enacted prior to receiving 95% of the loan funds.

(2) A certified copy of its ordinance or resolution establishing a user charge system, which shall be implemented prior to receiving 95% of the loan funds.

(b) The borrower shall certify in writing that the project has met the requirements of the CWSRF and undergone a SERP as required by the Department and the Authority.

(c) The borrower shall meet project performance standards within 1 year after the initiation of operation in accordance with The Clean Streams Law design specifications and the effluent requirements of its NPDES permit.

(d) The borrower shall submit an affirmative performance certification within 1 year after the initiation of operation.

(e) If the borrower cannot submit an affirmative performance certification, the borrower shall submit a corrective action report.

(f) The borrower shall provide the Authority with the right to audit its sewer use ordinance or its user charge system.

(g) The borrower shall provide the Authority with status reports at the Authority's request until the project is completed.

(h) The borrower shall maintain financial records in accordance with governmental accounting standards and conduct an annual audit of the financial records as required by the CWSRF and the Single Audit Act of 1984 (31 U.S.C.A. §§ 7501—7507) and the corresponding regulations at 15 CFR Part 8 Subpart A (relating to general provisions; prohibitions: nondiscrimination clause; applicability to programs).

§ 965.10. Statutory and procurement requirements.

(a) The borrower shall comply with State and Federal laws, including those listed in Appendix A, for project-related activities, including related procurement actions for equipment, construction, engineering, management, financial, legal or other services or goods.

(b) The Authority may approve a noncompetitive procurement proposal under one or more of the following circumstances:

(1) The borrower can only obtain the equipment, goods or services from a single source.

(2) The borrower demonstrates that there is a public emergency. The Authority will seek independent confirmation from the Department or other appropriate State or Federal agencies that a public emergency justifying a non-competitive procurement proposal exists.

APPENDIX A

The requirements for funds received from the CWSRF shall include requirements found in the following Federal statutes, Executive Orders and regulations:

- (1) The act of May 24, 1974 (Pub. L. No. 93-291,88 Stat.174) (16 U.S.C.A. §§ 469—469c), known as the Archaeological and Historical Preservation Act of 1974.
- (2) Section 176(c) of the Clean Air Act (42 U.S.C.A. § 7506 (c)).
- (3) Sections 2—17 of the Endangered Species Act of 1973 (16 U.S.C.A. §§ 1531—1543).
- (4) Executive Order 11593, Protection and Enhancement of the Cultural Environment.
- (5) Executive Order 11988, Floodplain Management.
- (6) Executive Order 11990, Protection of Wetlands.
- (7) Title XV of the Farmland Protection Policy Act (7 U.S.C.A. §§ 4201—4209).
- (8) The Fish and Wildlife Coordination Act (16 U.S.C.A. §§ 661—666(c)).
- (9) The National Historic Preservation Act of 1966 (16 U.S.C.A. §§ 470—470 W-6).
- (10) Section 1424(e) of the Safe Drinking Water Act (42 U.S.C.A. § 300 H-3).
- (11) The Wild and Scenic Rivers Act (16 U.S.C.A. §§ 1271—1287).
- (12) The Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C.A. §§ 3301—3374).
- (13) Section 306 of the Clean Air Act (42 U.S.C.A. § 7601) and section 508 of the Clean Water Act (33 U.S.C.A. § 1368), including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans.
- (14) The Age Discrimination Act of 1975 (42 U.S.C.A. §§ 6101—6107).
- (15) The Civil Rights Act of 1964 (42 U.S.C.A. §§ 1981—2000g).
- (16) Executive Order 11246, 30 FR 12319, as amended by Executive Order 11375, 32 FR 1403, as amended by Executive Order 11478, 34 FR 12985, as amended by Executive Order 12007, 42 FR 34617 (Women and Minority Business Enterprise).
- (17) Executive Order 11625, 36 FR 19967, as amended by Executive Order 12007, 42 FR 42839, and Executive Order 12138, 44 FR 29637, as amended by Executive Order 12608, 42 FR 34617 (Women and Minority Business Enterprise).
- (18) The Rehabilitation Act of 1973 (29 U.S.C.A. §§ 701—796(h) (including Executive Orders 11914 and 11250).
- (19) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C.A. §§ 4601—4655).
- (20) Executive Order 12549, 51 FR 6370 (Debarment and Suspension).

(21) The Single Audit Act of 1984 (31 U.S.C.A. §§ 7501—7507) and the corresponding regulations at 15 CFR Part 8 Subpart A (relating to general provisions; prohibitions: nondiscrimination clause; applicability to programs).

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