

ENVIRONMENTAL QUALITY

CHAPTER 40

WATER TREATMENT PLANTS AND OPERATORS

Subchapter 3

Waste Water Treatment Works Revolving Fund

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Sub-Chapter 3

Wastewater Treatment Works Revolving Fund

17.40.301 PURPOSE (1) The purpose of this subchapter is to implement the Water Pollution Control State Revolving Fund Act pursuant to Title 75, chapter 5, part 11, MCA, and sections 601 through 607 of the Federal Water Pollution Control Act, 33 USC 1381 through 1387, as amended.

(2) This program creates a perpetual financing mechanism for eligible water pollution control projects through use of loans and other financial incentives.

(3) The department of natural resources and conservation may also adopt rules that address measures for protecting the financial solvency of the water pollution control state revolving fund, including measures requiring debt security requirements for loans. (History: 75-5-1105, MCA; IMP, 75-5-1105, MCA; NEW, 1990 MAR p. 1468, Eff. 7/27/90; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2003 MAR p. 232, Eff. 2/14/03.)

17.40.302 DEFINITIONS In this subchapter, the following terms have the meanings indicated below, certain of which are supplemental to the definitions contained in 75-5-103 and 75-5-1102, MCA, and sections 601 through 607 of the Federal Water Pollution Control Act, 33 USC 1251 through 1387, as amended. Terms used herein without definition have the meanings given them in the Act or the federal Act.

(1) "Act" means the Water Pollution Control State Revolving Fund Act, Title 75, chapter 5, part 11, MCA.

(2) "Department" means the Montana department of environmental quality established by 2-15-3501, MCA.

(3) "Department of natural resources and conservation" means the Montana department of natural resources and conservation established by 2-15-3301, MCA.

(4) "Eligible water pollution control projects" means projects that meet the requirements of the federal Act and are approved by the department, including certain wastewater collection and treatment system projects, sewage system projects, storm sewer or storm drainage projects, solid waste management projects, and other nonpoint source projects.

(5) "EPA" means the United States environmental protection agency.

(6) "Federal act" means the federal Act as defined in 75-5-1102, MCA.

(7) "Intended use plan" or "IUP" means the document prepared annually by the department that identifies uses of the funds in the program and describes how those uses support the goals of the program.

(8) "Municipality" means municipality as defined in 75-5-1102, MCA.

(9) "Nonpoint source" means a source of pollutants that originate from diffuse runoff, seepage, drainage, or infiltration.

(10) "Nonpoint source management plan" means the most recent report submitted by the department to EPA pursuant to 33 USC 1329.

(11) "Nonpoint source project" means a project that has been approved in the nonpoint source management plan and that is eligible and has qualified for financing under the program pursuant to the federal Act, the Act, these rules, and applicable Department of Natural Resources and Conservation rules, and may include, without limitation, the following:

- (a) solid waste management systems;
- (b) manure storage facilities;
- (c) mitigation banks;
- (d) urban storm water runoff;
- (e) ground water protection;
- (f) animal feed operations;
- (g) no-till farm equipment;
- (h) wetlands restoration and preservation;
- (i) stream bank restoration;
- (j) submerged aquatic vegetation;
- (k) construction runoff; and
- (l) conservation easements.

(12) "Project priority list" means the list of projects expected to receive financial assistance under the program, ranked in accordance with a priority system developed under 33 USC 1296.

(13) "Private person" means a private person as defined in 75-5-1102, MCA.

(14) "Professional engineer" means an engineer licensed or otherwise authorized to practice engineering in Montana pursuant to Title 37, chapter 67, MCA.

(15) "Program" means the water pollution control state revolving fund program established by the Act.

(16) "Project" has the same meaning as in 75-5-1102, MCA.

(17) "Revolving fund" means the revolving fund as defined in 75-5-1102, MCA.

(18) "Sewage system" means any device for collection or conveyance of sewage or industrial wastes to an ultimate disposal point.

(19) "Solid waste management system" has the same meaning as in 75-10-203, MCA, except that, for the purposes of this subchapter, the term includes activities of and components and improvements to a solid waste management system including, but not limited to, the acquisition of land, installation of liners, monitoring of wells, construction and closure of landfills or composting facilities, and all necessary and related equipment.

(20) "Treatment works" has the same meaning as in 33 USC 1292.

(21) "Wastewater" means sewage, sewage sludge, industrial waste, other wastes, or any combination thereof.

(22) "Wastewater system" means a public sewage system or other system that collects, transports, treats or disposes of wastewater. (History: 75-5-1105, MCA; IMP, 75-5-1102, MCA; NEW, 1990 MAR p. 1468, Eff. 7/27/90; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2003 MAR p. 232, Eff. 2/14/03.)

17.40.303 USE OF THE FUND--ELIGIBLE ACTIVITIES FOR FUND

ASSISTANCE (1) The department shall administer the program in accordance with the federal Act, the Act, the trust indenture regarding the program, and these rules. If there is a conflict among the Act, the trust indenture, or these rules, the department shall resolve the conflict by applying the following order of precedence:

- (a) the Act;
- (b) the trust indenture;
- (c) these rules.

(2) The revolving fund may be used, without limitation, to:

(a) provide financial assistance to municipalities for construction, renovation, rehabilitation, expansion, improvement, or acquisition of publicly owned treatment works including, but not limited to:

(i) preliminary planning to determine the feasibility of the treatment works, engineering or architectural designs, plans and working drawings; or

(ii) construction and construction management of treatment works, including devices and systems used in the storage, conveyance, treatment, recycling and reclamation of municipal waste, storm water runoff, or combined sewer overflows.

(b) make loans to municipalities and private persons for projects that are consistent with the nonpoint source management plan and that have qualified as nonpoint source projects. These projects may include, but are not limited to:

(i) preliminary planning to determine the feasibility of the nonpoint source project, engineering or architectural plans and working drawings; or

(ii) acquisition of land and equipment and construction of facilities relating to nonpoint source projects;

(c) earn interest prior to disbursement, although the revolving fund may not be managed primarily for this purpose; and

(d) pay reasonable expenses incurred in administering the fund, except that funds used for this purpose may not exceed 4%, or the maximum amount allowed under the federal Act, of the capitalization grants received from the EPA. (History: 75-5-1105, MCA; IMP, 75-5-1107, MCA; NEW, 1990 MAR p. 1468, Eff. 7/27/90; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2003 MAR p. 232, Eff. 2/14/03.)

Rules 17.40.304 through 17.40.307 reserved

17.40.308 TYPES OF FINANCIAL ASSISTANCE (1) The department or the department of natural resources and conservation may provide financial assistance from the revolving fund by:

(a) making a loan for the costs of eligible water pollution control projects, subject to the following requirements:

(i) the term may not exceed 20 years after completion of the project, unless otherwise permitted by the federal Act, the Act, the trust indenture regarding the program, the department, and the department of natural resources and conservation;

(ii) repayment must begin as prescribed by the department of natural resources and conservation, but in any event not later than one year after project completion with all principal and interest payments credited directly to the fund;

(iii) the loan recipient shall establish a dedicated source of revenue for repayment of the loan; and

(iv) satisfaction of all additional requirements of the department of natural resources and conservation;

(b) purchasing or refinancing an existing municipal debt obligation for construction of an eligible water pollution control project begun after March 7, 1985, subject to all applicable requirements of the federal Act;

(c) purchasing bond insurance or guaranteeing full and timely payment of principal and interest on a debt obligation; or

(d) guaranteeing a revolving fund established by a municipality that is similar to the state revolving fund. (History: 75-5-1105, MCA; IMP, 75-5-1107, MCA; NEW, 1990 MAR p. 1468, Eff. 7/27/90; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2003 MAR p. 232, Eff. 2/14/03.)

17.40.309 CRITERIA FOR FINANCIAL ASSISTANCE TO MUNICIPALITIES

(1) To be eligible for financial assistance from the revolving fund, a municipality must:

(a) meet financial capability requirements set by the department of natural resources and conservation for the proposed project that ensure sufficient revenues will be available to operate and maintain the project for its useful life and to repay the loan;

(b) agree to operate and maintain the facility constructed or improved by the project so that it will function properly over the useful life of the project;

(c) maintain proper financial records in accordance with generally accepted governmental accounting standards, and agree to periodic audits by the department or a contractor to the department;

- (d) meet the statutory requirements listed in 33 USC 1382 for projects constructed with funds made available directly by federal capitalization grants;
 - (e) provide legal assurance that the necessary property titles, easements, and rights-of-way have been obtained to construct, operate and maintain the facility;
 - (f) prepare an engineering report evaluating the proposed project, including an analysis of cost-effectiveness and environmental effects;
 - (g) meet the applicable plan and specification requirements for the project (for example, for public wastewater systems, those described in ARM 17.38.101, and for solid waste management systems, those described in ARM 17.50.506);
 - (h) utilize proper construction inspection and project management procedures; and
 - (i) meet all applicable local, state, and federal laws and regulations.
- (2) All projects funded with financial assistance from the revolving fund must be listed on the project priority list and intended use plan as described in ARM 17.40.315 and 17.40.316, respectively. (History: 75-5-1105, MCA; IMP, 75-5-1105, 75-5-1113, MCA; NEW, 1990 MAR p. 1468, Eff. 7/27/90; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2003 MAR p. 232, Eff. 2/14/03.)

17.40.310 CRITERIA FOR LOANS TO PRIVATE PERSONS (1) A private person is eligible for a loan from the fund if the person's project proposal meets the following criteria:

- (a) the project is consistent with the nonpoint source management plan and has qualified as a nonpoint source project;
- (b) appropriate technical and administrative assistance is available for the project;
- (c) public or landowner support for the project is demonstrated;
- (d) adequate funding sources are available to completely finance the project;
- (e) the project meets the criteria for loans as stated in 75-5-1113, MCA; and
- (f) the project satisfies all conditions for financing of the project required by the department of natural resources and conservation. (History: 75-5-1105, MCA; IMP, 75-5-1113, MCA; NEW, 1990 MAR p. 1468, Eff. 7/27/90; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2003 MAR p. 232, Eff. 2/14/03.)

17.40.311 APPLICATION PROCEDURES (1) A complete application package may be submitted to the department at any time. The department shall consider applications in the order received. If the department determines, in its sole discretion, that it lacks sufficient time to consider an application during the state fiscal year (July 1 through June 30) in which it was submitted, the department shall consider the application during the next fiscal year.

(2) A municipality that seeks direct loan assistance, a loan guarantee, or insurance for a municipal obligation must submit:

- (a) a completed uniform application form;
- (b) a preliminary engineering or technical report that includes an assessment of the environmental impacts associated with the proposed project;
- (c) plans and specifications of the project, if available;
- (d) a project schedule;
- (e) an engineering contract with information concerning procurement of services; and
- (f) other information needed for evaluating the project, as determined by the department or required pursuant to administrative rules issued by the department of natural resources and conservation.

(3) A municipality that seeks loan assistance to refinance projects previously constructed and subject to outstanding indebtedness must submit:

- (a) a completed uniform application form;
- (b) cost information, including a description of existing indebtedness;
- (c) documentation indicating how the requirements listed in ARM 17.40.309 were satisfied when the project was originally constructed; and
- (d) other information needed for evaluating the project, as determined by the department or the department of natural resources and conservation.

(4) A private person who seeks financial assistance in connection with a nonpoint source project must submit:

- (a) a completed loan application in a form determined by the department and the department of natural resources and conservation to be appropriate for the private person;
- (b) a project work plan;
- (c) an implementation schedule;
- (d) a reasonably detailed description of the project;
- (e) a reasonably detailed estimate of the cost of the project;
- (f) a timetable for the construction of the project and for payment of the cost of the project;

(g) a description of the source or sources of funds to be used in addition to the proceeds of the loan to pay the cost of the project;

(h) a description of the source or sources of revenue proposed to be used to repay the loan;

(i) a current financial statement of the system showing assets, liabilities, revenues, and expenses;

(j) a statement as to whether, at the time of application, there are any outstanding loans, notes, bonds, or other obligations payable from the revenue of the system and, if so, a description of the loans, notes, bonds, or other obligations;

(k) a statement as to whether, at the time of the application, there are any outstanding loans, notes, or other obligations of the private person and, if so, a description of the loans, notes, or other obligations;

(l) all information that the department or the department of natural resources and conservation may require in order to determine the effect of making the loan on the tax exempt status of the state's bonds; and

(m) all other information that the department or the department of natural resources and conservation may require to determine the feasibility of a project and the applicant's ability to repay the loan including, but not limited to:

(i) engineering reports;

(ii) economic feasibility studies; and

(iii) legal opinions.

(n) other information needed for evaluating the project, as determined by the department or the department of natural resources and conservation. (History: 75-5-1105, MCA; IMP, 75-5-1111, MCA; NEW, 1990 MAR p. 1468, Eff. 7/27/90; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2003 MAR p. 232, Eff. 2/14/03.)

Rules 17.40.312 through 17.40.314 reserved

17.40.315 PROJECT PRIORITY LIST (1) The project priority list is established for rating and ranking possible projects for fund assistance.

(2) The department shall list all potential eligible projects on the project priority list, including projects proposed by project applicants and projects that the department determines are needed.

(3) The project priority list must include:

(a) a category assignment for each project based on the type of construction anticipated;

(b) an assignment of a numerical score for each project through use of the department's ranking criteria and ranking system, which must rate and rank projects according to:

(i) water quality impairment as it relates to:

(A) surface water; and

(B) ground water;

(ii) effectiveness of the proposed project in improving water quality;

(iii) activity-specific criteria; and

(iv) the applicant's readiness to proceed; and

(c) a system by which limited funds are allocated on an annual basis.

(4) The priority list must be revised at least annually to consider new projects and changes in project status, and to allocate available revenues from the fund for eligible uses. (History: 75-5-1105, MCA; IMP, 75-5-1112, MCA; NEW, 1990 MAR p. 1468, Eff. 7/27/90; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2003 MAR p. 232, Eff. 2/14/03.)

17.40.316 INTENDED USE PLAN--RANKING FOR FUNDING PURPOSES

(1) The department shall prepare an intended use plan (IUP) annually.

(2) A project selected for funding is subject to denial by the department of natural resources and conservation based on its review for financial capability, as required under 75-5-1113, MCA.

(3) The following factors must be considered in developing the IUP:

(a) ability of each listed project to proceed within the fiscal year;

(b) each project's position on the project priority list;

(c) long-term health and viability of the revolving fund, and the ability of the revolving fund to support the project; and

(d) financial need of the project applicant. (History: 75-5-1105, MCA; IMP, 75-5-1112, MCA; NEW, 1990 MAR p. 1468, Eff. 7/27/90; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2003 MAR p. 232, Eff. 2/14/03.)

17.40.317 PUBLIC PARTICIPATION (1) The project priority rating and ranking system, project priority list, and intended use plan are subject to full public scrutiny. Each year the department shall mail the draft priority list to the program's list of interested persons as defined in 2-4-102, MCA, publish notice of its availability in at least five newspapers of general circulation, and post such notice on the department's website.

(2) After preparation of the draft Montana rating and ranking system, the draft project priority list, and the draft intended use plan, a formally advertised public hearing must be held to allow public comment concerning the rating and ranking system, project priority list, and intended use plan. All public comments received by the department must be addressed in a written summary. (History: 75-5-1105, MCA; IMP, 75-5-1112, MCA; NEW, 1990 MAR p. 1468, Eff. 7/27/90; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2003 MAR p. 232, Eff. 2/14/03.)

17.40.318 STATE REVOLVING FUND PROJECTS ELIGIBLE FOR CATEGORICAL EXCLUSION FROM MEPA REVIEW (1) Except as provided in (2), a department action under Title 75, chapter 5, part 11, MCA, and this subchapter is excluded from the requirement to prepare an environmental assessment (EA) or environmental impact statement (EIS) if the application for department review is for any of the following projects:

(a) projects relating to existing infrastructure systems such as sewer systems, drinking water supply systems, and stormwater systems, including combined sewer overflow systems that involve:

- (i) minor upgrading;
- (ii) minor expansion of system capacity;
- (iii) rehabilitation (including functional replacement) of the existing system and system components; or
- (iv) construction of new minor ancillary facilities adjacent to or on the same property as existing facilities; or

(b) projects in unsewered communities involving the replacement of existing on-site systems, provided that the new on-site systems do not result in substantial increases in the volume of discharges or in loadings of pollutants from existing sources, and do not relocate existing discharges.

- (2) A categorical exclusion may not be granted for a department action under (1) if:
- (a) the action would authorize facilities that will provide a new discharge or relocate an existing discharge to ground or surface waters;
 - (b) the action would result in an increase above permit levels established for the facility under the Montana pollutant discharge elimination system or Montana ground water pollution control system for either volume of discharge or loading rate of pollutants to receiving waters;
 - (c) the action would authorize facilities that will provide capacity to serve a population at least 30% greater than the existing population;
 - (d) the action is not supported by the state, or other regional growth plan or strategy;
 - (e) the action directly or indirectly involves or relates to upgrading or extending infrastructure systems primarily for the purposes of future development;
 - (f) the department has received information indicating that public controversy exists over the project's potential effects on the quality of the human environment; or
 - (g) the department determines that the proposed project that is the subject of the state action shows some potential for causing a significant effect on the quality of the human environment, based on ARM 17.4.608, or might possibly affect:
 - (i) sensitive environmental or cultural resource areas; or
 - (ii) endangered or threatened species and their critical habitats.
- (3) The department shall document its decision to issue a categorical exclusion by referencing the application, providing a brief description of the proposed action, and describing how the action meets the criteria for a categorical exclusion in (1) without violating the criteria in (2).
- (4) The department may revoke a categorical exclusion if:
- (a) the project is not initiated within the time period specified in the facility plan, or a new or modified application is submitted;
 - (b) the proposed action no longer meets the requirements for a categorical exclusion because of changes in the proposed action;
 - (c) new evidence demonstrates that serious local or environmental issues exist; or
 - (d) state, local, tribal, or federal laws may be violated. (History: 75-5-201, 75-5-1105, MCA; IMP, 75-1-201, 75-5-1105, MCA; NEW, 1992 MAR p. 1239, Eff. 6/12/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2009 MAR p. 412, Eff. 4/17/09.)

