

Chapter Adm 35

CLEAN WATER FUND

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Note: Chapter Adm 35 was created as an emergency rule effective March 18, 1991. Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1999, No. 523.

Adm 35.01 Purpose. The purpose of this chapter is to establish rules under s. 281.59, Stats., for the administration of a program to provide financial assistance to municipalities for certain costs incurred in abatement of pollution of the waters of the state.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91.

Adm 35.02 Definitions. In this chapter, the following terms shall have the respective meanings:

(1) "Clean water fund" means the fund established under s. 25.43, Stats., for the purpose of providing financial assistance to municipalities for certain costs incurred in abatement of pollution of waters of the state.

(2) "Department" means the department of administration.

(3) "Financial assistance" means a project loan or a grant to a municipality.

(4) "Market interest rate" means interest at the effective rate, as determined by the department, for revenue obligations issued by the state to fund a project loan or a portion of a project loan.

(5) "Municipality" has the meaning set forth in s. 281.59 (1) (c), Stats.

(6) "Project" means planning, design, or construction of a water pollution abatement project.

(7) "Project loan" means a loan to a municipality of money in the clean water fund to pay for costs of a project. "Project loan" includes a capital cost loan under s. 281.59 (9) (a), Stats., a project loan that constitutes financial hardship assistance under s. 281.58 (13), Stats., a project loan for a transition project under s. 281.59 (13), Stats., and other project loans.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91; **correction in (7) made under s. 13.93 (2m) (b) 7., Stats., Register February 2002 No. 554.**

Adm 35.03 Certification. (1) In this section, "Certification" means a determination by the department that a municipality meets the conditions of receiving financial assistance under s. 281.59 (9) (am) and (b), Stats.

(2) A notice of financial assistance commitment shall not be issued if the department determines that the municipality is unlikely to be able to repay the project loan. The department may take into consideration the following factors when determining whether to provide certification:

(a) The type and amount of the dedicated source of revenue available to repay the project loan.

(b) Debt service payments on the project loan, including but not limited to, amortization, actual or estimated interest rate and the anticipated disbursement schedule.

(c) Demographic information, including but not limited to, population, income, property values and employment.

(d) Services provided and costs incurred by the municipality.

(e) Revenues available to the municipality.

(f) Information that is included in financial statements of the municipality for the past 3 fiscal years or that would be required to be included if such statements were prepared in accordance with generally accepted accounting principles applicable to government units, and an auditor's opinion regarding the financial statements, including exceptions in such opinion or failure to provide such opinion.

(g) Any credit rating assigned to the municipality by a nationally recognized bond rating agency, whether or not such rating is published.

(h) Terms and conditions contained in any resolution or indenture of trust for obligations issued by the state to fund project loans.

(i) Any relevant financial information which may have an impact on a municipality's ability to repay the project loan.

(3) (a) The department may not issue a certification unless the municipality demonstrates to the satisfaction of the department that the municipality has the financial capacity to assure sufficient dedicated sources of revenue to operate and maintain the project for its useful life and to pay the debt service, including funding and maintaining any debt service reserve, on its project loan. The department may consider the effect of proposed financial hardship assistance or assistance provided by another entity in making a determination of financial capacity.

(b) The department may require an opinion of counsel or bond counsel, acceptable to the department, to the effect that the obligation of the municipality to repay the project loan is valid and enforceable and that interest on the project loan is excluded from gross income for federal income tax purposes.

(4) (a) The department may not issue a certification unless the municipality establishes one or more dedicated sources of revenue that the department deems sufficient for repayment of the project loan.

(b) In this subsection, "dedicated source of revenue" includes any of the following:

1. For a general obligation, an irrevocable pledge of ad valorem taxes.

2. For a revenue obligation, a pledge of net revenues available to the utility, including user fees, a pledge of special assessments, municipal payments, other income, or a combination thereof.

3. For a metropolitan sewerage district organized under ss. 200.21 to 200.65, Stats., a general obligation pledge of ad valorem taxes.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91; **correction in (4) (b) 3. made under s. 13.93 (2m) (b) 7., Stats., Register February 2002 No. 554.**

Adm 35.04 Credit and security. (1) The municipality's obligation to repay a project loan may be in the form of a general obligation or a revenue obligation.

(2) The department may require the project loan to the municipality to be in any form which the department in its discretion determines will not, during the term of the project loan, substantially and adversely affect the municipality's ability to borrow for general operations and capital costs other than the project.

(3) In administration of its powers and duties under s. 281.59 (11) (b), Stats., the department shall deduct, as a first charge against state payments due the municipality, any amounts due to the clean water fund.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91.

Adm 35.05 Disbursement of project loan proceeds.

(1) Except as provided in this section, proceeds of a project loan shall be distributed by the department to the municipality upon presentation of a request for disbursement from the municipality and written certification from the department of natural resources that the municipality is in compliance with all applicable requirements of ch. NR 162 and the financial assistance agreement. The form and procedure of the request shall be specified in the financial assistance agreement.

(2) Except when the department determines that there will be no adverse impact on the clean water fund, disbursements shall be no greater than, nor earlier than, the amounts and dates mutually determined by the municipality and the department and stated in the financial assistance agreement.

(3) Disbursements may be suspended or withheld if the municipality has failed to comply with project objectives or any of the terms, conditions or reporting requirements of the financial assistance agreement. Disbursements may also be suspended or held upon the issuance of a stop-work order under s. NR 162.20. Disbursements shall resume upon correction of the violation or upon amendment of the financial assistance agreement.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91.

Adm 35.06 Interest rates. The department shall establish the market rate used to calculate the applicable rate under s. NR 162.07 (4) for each project loan, taking into account the following factors:

(1) The market rate used to calculate the rate for a particular project loan or portion of a project loan shall be at the effective interest rate of the funds, as determined by the department, that are used to fund all or a portion of each project loan. When a current market rate cannot be determined from an actual bond sale, the department may estimate such market rate based on market comparables and market indices.

(2) The market rate shall be calculated for each obligation used to fund loans from the clean water fund. If an individual project receives disbursements derived from the proceeds of more than one obligation issued by the state, then the rate applicable to that project may be calculated according to the market rates of the corresponding sources of the disbursements made for that project.

(3) Notwithstanding subs. (1) and (2), the rate for a project or a portion of a project that qualifies under s. 281.59 (13), Stats., shall be 2.5% per year.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91.

Adm 35.07 Accountability for project loan. (1) A municipality that receives a project loan shall:

(a) Maintain project accounts in accordance with generally accepted government accounting principles, including accurate,

complete and current records of project costs, sources and uses of project funds, documentation as to the eligibility of project costs, records of refunds, rebates and other credits relating to the project and all payments that constitute the dedicated source of revenue.

(b) Provide, if available, the most recent audited financial statements at the time of application and at least annually during the term of the financial assistance agreement.

(c) Take no action which would reduce the amount available from the dedicated source of revenue established for repayment of the project in accordance with s. 281.58 (14) (b) 1., Stats.

(2) The department may require or perform financial audits prior to, during or at the end of the term of the project loan.

(3) A municipality that receives financial assistance provided in whole or in part from the federal capitalization grant described in the Federal Water Quality Act of 1987, 33 USC 1381 to 1387, shall comply with the Federal Single Audit Act, 31 USC 7501 to 7507, and OMB circular A 128. A municipality that receives financial assistance from other sources may, at its option, commission a single audit in accordance with the Federal Single Audit Act, OMB circular A 128 and the state's single audit guidelines. All reasonable, allocable costs of single audits are eligible costs to the extent provided in s. NR 162.05.

(4) The department may rely on a commissioned audit unless it finds that the audit was not performed in accordance with state or federal auditing standards. The department may perform, or commission others to perform an additional audit or audits to supplement work done in a single audit, to the extent it deems necessary.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91.

Adm 35.08 Financial assistance agreement amendments.

The written certification to the department of natural resources from the department is required for any amendment to a financial assistance agreement which will have a financial impact greater than that provided for in the financial assistance agreement or which will affect the security of the loan, as determined by the department. A financial assistance agreement does not include the evidence of indebtedness. The evidence of indebtedness may not be amended without the prior written approval of the department.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91.

Adm 35.09 Variances. The department may approve a variance from requirements of this chapter when the department determines that the variance is essential to provide financial assistance within the scope and intent of the program, or that the variance is in the best interest of the state. In approving a variance, the department may take into account such factors as good cause, circumstances beyond the control of the recipient or the department and financial hardship. A request by a municipality for a variance shall include a description of the nature of the variance and the circumstances leading to the request.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91.