

CHAPTER 92
STATE REVOLVING FUND LOANS FOR WASTEWATER TREATMENT

567—92.1(455B) Statutory authority. The authority for the Iowa department of natural resources to provide loans to eligible applicants to assist in the construction of wastewater treatment facilities is provided by Iowa Code sections 455B.291 to 455B.299.

567—92.2(455B) Scope of title. The department has jurisdiction over the surface and groundwater of the state to prevent, abate and control pollution. As a part of that general responsibility, the department and the authority are jointly delegated the administration of (1) the sewage treatment works revolving fund (CWSRF) loan program to assist in water pollution abatement projects pursuant to the Clean Water Act and (2) the drinking water treatment revolving loan fund described in 567—Chapter 44. A project must comply with this chapter to be eligible for a CWSRF loan. This chapter provides for the general rules of practice for the department's administration of the CWSRF program, including the criteria for loan eligibility, and the general project and program administration rules.

In addition to loans to municipalities, Section 603(c) of Title VI of the Clean Water Act allows the use of Title VI capitalization grant funds to assist the state in implementation of a nonpoint source pollution management plan as provided for in Section 319 of the Clean Water Act. Iowa's nonpoint source management plan identifies the rehabilitation and improvement of onsite wastewater treatment systems as an area of need. It is the intent of the commission that a portion of the Title VI capitalization grant funds be used to establish a program for the purpose of making low-interest loans available for rural homeowners who need to rehabilitate or improve existing onsite wastewater treatment systems. 567—Chapter 93 provides for the general administration of the onsite wastewater assistance fund.

567—92.3(455B) Definitions. The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

“*Authority*” means the Iowa finance authority (IFA) as established by Iowa Code chapter 16.

“*Clean Water Act*” means the federal Water Pollution Control Act of 1972, PL 92-500 as amended by the Water Quality Act of 1987, PL 100-4 as published in 33 U.S.C. 1251-1376.

“*Commission*” means the Iowa department of natural resources environmental protection commission of the state of Iowa.

“*CWSRF*” means the sewage treatment works financing program described in this chapter.

“*Department*” means the Iowa department of natural resources (DNR).

“*Director*” means the director of the Iowa department of natural resources.

“*Eligible cost*” means the cost of all labor, material, machinery, equipment, loan initiation and service fees, design and construction engineering services, legal fees and expenses related to the project, capitalized interest during construction of the project, and all other expansion, construction and rehabilitation of all or part of a project incurred after the date of approval of an intended use plan which contains the project on a list approved for CWSRF assistance.

“*Eligible recipient*” means a municipality (as defined below) that meets the following criteria:

1. Appears on the state project priority list.
2. Has submitted a complete application for a project with eligible costs.
3. Will be in a state of readiness to proceed to construction and use loan payments timely.
4. Has been included on the state's intended use plan as a proposed loan recipient or is otherwise an eligible recipient as described in rule 567—93.4(455B,79GA,SF479).

“*Fiscal year*” means the state fiscal year starting July 1 and ending June 30.

“*Intended use plan (IUP)*” means a plan identifying the intended uses of funds available for loans in the CWSRF for each fiscal year as described in Section 606(c) of the Clean Water Act.

“*Municipality*” means the city, county, sanitary district, state agency, or other governmental corporation or body empowered to provide sewage collection and treatment services, or any combination of the two or more of such governmental bodies, or corporations acting jointly, in connection with a project.

“*Project*” means the acquisition, construction, reconstruction, extension, equipping, improvement, or rehabilitation of any works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner including treatment works as defined in Section 212 of the Clean Water Act, or the implementation and development of management programs established under Sections 319 and 320 of the Clean Water Act. The term also applies to a separate segment or phase of a segmented or phased project.

“*Project completion*” means the date operations of the project are initiated or are capable of being initiated, whichever is earlier.

“*State project priority list (PPL)*” means the list of projects in priority order that may qualify for CWSRF loan assistance. The list is developed in accordance with 567—Chapter 91.

“*State revolving fund (SRF)*” means the sewage treatment works revolving loan fund established by Iowa Code sections 455B.291 to 455B.299.

567—92.4(455B) General policy. Loans up to 100 percent of the eligible costs will be made available pursuant to the requirements of these rules and Title VI of the Clean Water Act. Loans are available for construction only and will not be considered for planning activities as well as other costs identified as unallowable for loan assistance in subrule 92.8(2).

92.4(1) Administration. The department, in conjunction with the authority, has been delegated the responsibility of administering the CWSRF program and the DWSRF program described in 567—Chapter 44. The director will coordinate with the authority under the terms of an interagency agreement entered into pursuant to Iowa Code chapter 28E.

92.4(2) Decisions.

a. Departmental staff decisions in administering the CWSRF loan program shall conform to generally accepted principles and standards of good practice. Guidance shall include, but not be limited to:

1. 40 CFR, Parts 31, March 11, 1988, and 35, July 1, 1987;
2. Applicable state laws, rules, and court decisions;
3. Guidance available from the EPA;
4. Any applicable federal regulations.

b. Decisions of department staff are final unless the recipient files a written petition for review with the director. The petition must be addressed to the director and clearly state the decision in question and the basis for the requested review. The recipient has the right to appeal a decision to the commission pursuant to Iowa Code chapter 17A or to the state court.

92.4(3) First use of funds. Rescinded IAB 5/20/98, effective 6/24/98.

92.4(4) Minimum/maximum loans. The minimum loan amount which will be considered is \$50,000. The maximum amount loaned to any municipality shall not exceed 60 percent of the available loan funds in the CWSRF attributable to any fiscal year.

92.4(5) Phased projects. Loan funds for future portions of phased or segmented projects cannot be ensured. Partial or phased funding for a project may be made on a case-by-case basis with no assurance of future funding. Loans made for separate phases or segments of a project will be administered separately.

92.4(6) Eligible recipient determination. Municipalities projected to be able to qualify for CWSRF assistance will be identified in an annual intended use plan. Only those projects on the current fiscal year state project priority list developed pursuant to 567—Chapter 91 may be considered as an eligible recipient. CWSRF assistance will be available to projects in priority order.

92.4(7) State capitalization grant. The Clean Water Act authorizes the Environmental Protection Agency (EPA) to offer capitalization grants to states for use in a revolving fund loan program. A portion of the capitalization grant, as allowed by Title VI of the Clean Water Act, will be used to administer the CWSRF program.

92.4(8) Loan commitments. Loan agreements will be binding commitments based on estimated eligible costs prior to construction. A final adjustment to a loan amount may be made upon completion of construction.

92.4(9) Loan adjustments. Loans will be made to eligible recipients as soon as possible after moneys are available. The CWSRF will be managed such that contingency moneys are available in loans to allow for final adjustments in allowable costs as approved by the director. If eligible costs exceed the loan amount, the recipient may request an increase. The director in coordination with the authority will evaluate the request considering available moneys in the fund as well as the financial risk to determine the appropriate action, including renegotiation of the loan. Should costs be less than the loan amount, the loan shall be adjusted.

92.4(10) Double benefits. Projects that have received a federal construction grant under provisions of the Clean Water Act are not eligible to receive a loan for the nonfederal share of the project.

567—92.5(455B) Application procedures.

92.5(1) Forms. The department will provide an application package to apply for CWSRF loan assistance and to provide documentation in the program. Forms can be obtained from the Environmental Protection Division, Iowa Department of Natural Resources, Henry A. Wallace Building, 502 E. Ninth Street, Des Moines, Iowa 50319-0034.

92.5(2) General requirements. The following items in addition to the requirements of subrule 92.5(1) must be included in a complete CWSRF loan application:

- a. Two copies of the facility plan certified by a professional engineer licensed to practice in Iowa;
- b. A schedule for submission of plans and specifications for the project;
- c. A user charge system;
- d. A project construction schedule and cash flow projection including the acquisition of necessary land;
- e. A summary of all financial arrangements necessary to fund the project; and
- f. A description of a dedicated revenue source for loan repayments.

92.5(3) Timing. Applications received for eligible projects by the department on or before July 1 will be assigned a priority for loan assistance in the development of the IUP for that fiscal year. Applications received after that date will be considered for addition to the list of eligible recipients in the IUP in priority order following applicants which had applied by July 1.

567—92.6(455B) Intended use plan.

92.6(1) Development. The director shall prepare an intended use plan (IUP) each year. The IUP will be subjected to a public hearing and approved by the commission.

92.6(2) Contents. The IUP will identify the anticipated uses of loan funds available for that fiscal year and will include the following:

a. A list of projects from the state project priority list that are eligible for CWSRF loans and any proposed activities eligible for assistance under Sections 319 and 320 of the Clean Water Act. The list will include the name of the eligible recipient, any applicable NPDES permit number, the projected amount of loan assistance, schedule of estimated disbursement of funds and preliminary identification of projects that may undergo an environmental impact statement. The department will consider the following in developing the list of eligible recipients for the intended use plan:

- (1) Rescinded IAB 5/20/98, effective 6/24/98.
- (2) Applications on file.

(3) Whether a project will be ready to proceed on a schedule consistent with time requirements for outlay of funds.

(4) Whether the proposed project addresses the need upon which the municipality's priority is based.

(5) Applicant's financial capability to service the loan, provide operation and maintenance, provide replacement and debt service reserves.

(6) Applicant's statement of willingness to accept all loan terms and conditions.

(7) Funds available, project priorities and the administrative capacity of the department.

b. Discussion of the long- and short-term goals of the CWSRF.

c. Information on the types of activities to be supported by the CWSRF. The IUP will identify any funds to be directed to the onsite wastewater assistance fund (OSWAF) described in rules 567—93.3(455B,79GA,SF479) and 567—93.10(455B,79GA,SF479) to implement Iowa's nonpoint source management plan.

d. Assurances and specific proposals on how the state intends to meet requirements of the following sections of the Clean Water Act:

(1) 602(a) Environmental reviews.

(2) 602(b)(3) The state will agree to enter binding commitments equal to at least 120 percent of each quarterly federal capitalization grant payment within one year after receipt.

(3) 602(b)(4) Certify that expenditure of all funds in the CWSRF will be done in an expeditious and timely manner.

(4) Rescinded IAB 5/20/98, effective 6/24/98.

(5) Rescinded IAB 5/20/98, effective 6/24/98.

(6) Contingency list. The IUP will list those projects that are fundable in a fiscal year. In addition, a contingency list will also be included. These projects could become fundable in accordance with the procedures found in subrule 92.8(7) should a fundable project not proceed in a timely manner.

e. The method by which the IUP may be amended.

567—92.7(455B) Loan and project initiation.

92.7(1) *Loan and project initiation conference.* Each eligible recipient shall schedule loan initiation conference with the department. The eligible recipient's official representative (and usually their consultant) will meet with the department to discuss:

a. SRF loan program policies, procedures, and guidelines.

b. Allowable costs.

c. Treatment technologies.

d. Environmental impacts and review considerations.

e. Public participation.

f. Scheduling.

g. Other information as needed.

92.7(2) *Review criteria.* The director shall review SRF loan applications for eligible recipients and verify the following items:

a. The project is on the state project priority list.

b. The applicant has prepared and received approval of an adequate facility plan report.

c. The project will be in conformance with any applicable areawide water quality management plans.

d. The applicant has or will adopt an acceptable user charge system.

e. The applicant has demonstrated its ability to provide the necessary legal, institutional, managerial and financial capability to ensure adequate construction, operation and maintenance. If the director has reasonable grounds to believe that an applicant's disposal system is not viable, the department may require the applicant to submit management and financial plans as prescribed in Iowa Code section 455B.174.

f. The applicant has provided an acceptable project schedule for project initiation and completion.

g. The applicant's ability to repay the loan is consistent with the department's requirements after consultation with the authority.

92.7(3) *Loan denial.* The director shall inform the applicant in writing the reason for denial and return any application not in substantial compliance with these rules.

567—92.8(455B) General administrative requirements.

92.8(1) *Loan agreement conditions.* The director in coordination with the authority will prepare a loan agreement when the application has been determined to be in compliance with the requirements of the Clean Water Act and applicable state rules for CWSRF funding. The loan agreement to be executed by the applicant and the department shall be a binding commitment under Iowa law, shall include conditions and terms to be effective for the loan period, and shall be accompanied by evidence of legality and tax-exempt status satisfactory to the director. A copy of the current form of loan agreement shall be provided to the recipient at the time of application.

92.8(2) *Allowable and unallowable costs.* Allowable costs shall be limited to those eligible costs deemed necessary, reasonable, and directly related to the efficient completion of the project. Generally, the director will determine project costs eligible for loan assistance in accordance with rule 567—91.6(455B). Land purchase, easement or rights-of-way costs are not eligible. In addition to those identified in 567—Chapter 91, unallowable costs include the following:

a. Cost of the nonfederal share of any project funded by an EPA grant under the provisions of the Clean Water Act.

b. Costs of planning and application for an SRF loan.

c. Cost of service lines and in-house plumbing.

d. Administrative costs of the recipient.

e. Vehicles and tools.

92.8(3) *Records requirements.* The recipient shall maintain adequate records that document all costs associated with the project. Moneys from the SRF and those contributed by the recipient shall be accounted for separately. Accounting procedures shall conform with generally accepted government accounting standards as defined by the U.S. General Accounting Office (GAO) publication "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions," dated May 1988. All records shall be preserved and made available to the department, the authority, state auditor, and the Office of the Inspector General of the EPA for at least three years from the date of the final loan payment.

92.8(4) *Audit and inspection.* The recipient shall provide access at all times for the department, the authority, state auditor, and U.S. EPA Office of Inspector General to all project records and documents for inspection and audit purposes for a period of three years after the date of last loan payment. The same access to the project site(s) shall be provided for inspection purposes.

92.8(5) *Crosscutting laws.* Other federal and state statutes and programs may affect an SRF project. Loan agreements will include an assurance that a recipient will comply with all applicable federal and state requirements.

92.8(6) *Construction payment schedules.* The recipient must submit a construction drawdown schedule to the department prior to the award of contracts.

92.8(7) *Project bypass.* Any project identified in the intended use plan for funding in a fiscal year that has not signed a binding commitment by August 31 following the fiscal year in which a fundable priority was assigned may be bypassed by projects of a lower priority that are in a state of readiness.

92.8(8) *Termination.* The director shall have the right to terminate any loan when terms of the agreement have been violated or project activities are not progressing in a satisfactory manner. Loans will be terminated if construction has not begun within one year of the execution of a loan agreement. The director in coordination with the authority will establish a repayment schedule for funds already loaned to the recipient. All terminations must be in writing.

567—92.9(455B) Loan payment requirements.**92.9(1) Interim payments.**

a. General. Payments will be made to the recipient for actual costs incurred. Interim payment requests can be made monthly using forms furnished by the department with adequate documentation to ensure that the costs are allowable. Interim payment requests shall be certified by the recipient that costs incurred reflect the value of work in place and materials and equipment on hand. Documentation should include evidence costs are incurred but need not include evidence of payment by the loan recipient. Interim payments will be made in accordance with the loan agreement.

b. Retainage. The department will retain loan payments to the extent that progress payments to the contractor from the recipient are withheld according to state law.

c. Overpayment. Any funds paid to the recipient that are not expended after the project is complete shall be repaid to the CWSRF after the loan is adjusted.

92.9(2) Final payment. Final payment to the recipient can be made following the final inspection and acceptance by the recipient and the department, and the following have been reviewed and approved:

- a.* A request for final payment from the recipient.
- b.* Certification by the recipient of project completion and acceptance by the recipient or an acceptable close-out settlement for projects that have encountered a dispute.
- c.* Certification by the recipient that labor standard provisions have been met.
- d.* An acceptable and enacted user charge ordinance.
- e.* Recap of all engineering, legal, administrative, and all other allowable and unallowable expenses.
- f.* Final project budget showing all funding sources utilized by budget categories.
- g.* Execution of a loan agreement adjustment based on final costs.

567—92.10(455B) Project requirements. The following requirements of this rule apply to all wastewater treatment projects defined in Section 212 of the Clean Water Act receiving assistance from the CWSRF that entered a binding loan commitment or initiated construction prior to October 1, 1994. They are identified here with references to sections of the Clean Water Act and federal regulations, where appropriate. All wastewater treatment projects receiving assistance from the CWSRF which entered a binding loan commitment on October 1, 1994, or after and did not initiate construction of the loan project in whole or in part prior to October 1, 1994, need only meet the requirements of paragraphs 92.10(1)“a,” 92.10(1)“h,” 92.10(2)“b,” 92.10(2)“c,” 92.10(2)“f” to 92.10(2)“i,” and subrule 92.10(3).

92.10(1) Planning. The planning phase of a project includes those necessary plans and studies which directly relate to facilities needed to comply with enforceable requirements of the Clean Water Act and state statutes. It consists of a systematic evaluation of alternatives that are feasible considering the unique demographic, topographic, hydrologic, and institutional characteristics of the planning area. Facilities planning must support selection of the proposed alternative.

The planning phase must include the following:

a. A description of the proposed project and the complete system of which it is a part. The facility plan must be prepared in accordance with chapter 11 of the “Iowa Wastewater Facilities Design Standards,” and meet the applicable provisions of this subrule.

b. Best practicable waste treatment technology—Section 201(b) requires that projects apply best practicable waste treatment technology (see 40 CFR 35.2005(b)(7): Definition of BPWTT, 40 CFR 35.2030(b)(2): Facilities Planning).

c. Alternative waste management techniques—Section 201(g)(2) requires that alternative technologies be considered in project design (40 CFR 35.2030: Facilities Planning).

d. Infiltration/inflow—Section 201(g)(3) requires the applicant to show that the related sewer collection system is not subject to excessive infiltration (40 CFR 35.2030(b)(4): Facilities Planning, 40 CFR 35.2120: Infiltration/Inflow).

e. Innovative/alternative technology—Section 201(g)(5) requires that applicants study innovative and alternative treatment technologies and take into account opportunities to construct revenue producing facilities and to make more efficient uses of energy and resources (40 CFR 35.2030: Facilities Planning).

f. Recreation and open space opportunities—Section 201(g)(6) requires that the applicant analyze the potential recreation and open space opportunities in the planning of the proposed facilities (40 CFR 35.2030(b)(5): Facilities Planning).

g. Water quality management planning—Section 204(a)(1) and (2) (two statutory references) requires that treatment works projects be included in any plans developed under Sections 205(j), 208, 303(e), 319 and 320 (40 CFR 35.2102: Water Quality Management Plans).

h. Environmental review. Loan recipients will conduct environmental review of projects using construction grants procedures in 40 CFR Part 6, July 1, 1987, as a part of facility planning. The potential applicant should work with the department as early as possible in the facilities planning process to determine if the project qualifies for a categorical exclusion from 40 CFR Part 6 requirements, or whether a finding of no significant impact or an environmental impact statement is required. In conjunction with the facility planning process as described in 40 CFR 35.2030(c) July 1, 1987 edition, a potential applicant may request formal determination under 40 CFR Part 6. All of 40 CFR Part 6, July 1, 1987 edition, pertaining to Procedures for Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy Act, is hereby adopted and incorporated herein. However, all references to the U.S. Environmental Protection Agency as performing acts or reviews shall be substituted with the department for the purposes of this chapter.

92.10(2) *Project design and construction.* The project design and construction phase must include the following items:

a. Value engineering. Section 218 ensures that treatment systems are cost-effective and requires that projects of over \$10 million include a value engineering review (40 CFR 35.2030(b)(3)).

The value engineering review must be conducted before the project design nears substantial completion.

b. User charge system. A system of user charges must be developed and enacted to ensure that users will pay their proportionate share of the costs of operation and maintenance (including replacement) of any waste treatment services provided by the recipient. A user charge system may also include methods of revenue collection for loan repayments.

c. Recipient capability. The recipient must demonstrate to the department that it has the legal, institutional, managerial and financial capability to ensure adequate construction, operation and maintenance of treatment works.

d. Davis-Bacon Act. Section 513 applies Davis-Bacon labor wage provisions to treatment works construction (see 29 CFR Part 5, July 1, 1987). Wages paid for the construction of treatment works must conform to the prevailing wage rates established for the locality by the U.S. Department of Labor under the Davis-Bacon Act (Section 513 applies 40 U.S.C. 276 et seq.).

e. Project performance certification. The recipient shall confer with the department and a date for project works in operation shall be determined. One year after the project has been (or is capable of being) placed into operation, the recipient must certify to the department whether or not the project meets design specifications and effluent limitations. If, for any reason, the recipient is not able to certify affirmatively on the due date, a report outlining timely corrective measures must be submitted in lieu of certification.

f. Minority business enterprise/women's business enterprise (MBE/WBE). The recipient must comply with requirements of MBE/WBE participation as found in 40 CFR 31.36(e), March 11, 1988. The director will negotiate with the EPA regional administrator to determine the overall "fair share" objective for CWSRF loan-assisted projects. The recipient shall take the following affirmative steps to ensure that small, minority, and women's business enterprises are utilized where possible as sources of supplies, construction, and services:

- (1) Placing qualified small, minority, and women's business enterprises on solicitation lists;
- (2) Ensuring that small, minority, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women's business enterprises;
- (4) Establishing delivery schedules, where requirements of the work permit, which encourage participation by small, minority, and women's business enterprises;
- (5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; and
- (6) Requiring prime contractors to take the affirmative steps listed above when awarding subcontracts.

g. Site. When real property is necessary to be acquired as part of the project and within the project period, the recipient shall submit documentation of the acquisition, including the legal description, the date the property was acquired, and an appraisal report by a qualified appraiser. Submittal to the department shall occur prior to contract award.

h. Project changes. The recipient must submit to the department prior to final loan payment all modifications to the project including changes to the plans and specifications and changes in the contract (change orders) for approval. The recipient is responsible for any costs or actions necessary should the changes be implemented prior to departmental review and subsequently found to be unapprovable.

i. State inspections. Personnel of the department shall have the right to examine all construction aspects of the project, including materials and equipment delivered and stored on site for use on the project.

92.10(3) Qualifying requirements. Other information not identified in any particular phase of a project but which includes basic qualifying factors necessary to qualify any project for CWSRF assistance must be provided.

a. Fundable categories of projects are as defined in 567—subrule 91.6(2).

b. Capital financing plans. Eligible recipients must develop a capital financing plan which, at a minimum:

- (1) Projects the future requirements for waste treatment services within the applicant's jurisdiction for a period of no less than ten years;
- (2) Projects the nature, extent, timing, and costs of future expansion and reconstruction of treatment works which will be necessary to satisfy the applicant's projected future requirements for waste treatment services; and
- (3) Sets forth with specificity the manner in which the applicant intends to finance such future expansion and reconstruction.

The recipient must submit the plan to the department for any comments deemed necessary.

c. Cost information. Cost estimates for the total project and costs allowable for loan financing shall be provided to the department by an eligible recipient.

d. NPDES compliance. To qualify for a CWSRF loan, a recipient must demonstrate to the satisfaction of the director that the project receiving loan assistance is a part of the recipient's overall plan that addresses all wastewater treatment needs and that describes how compliance with NPDES permit limitations will be achieved and maintained.

92.10(4) Other. Rescinded IAB 5/20/98, effective 6/24/98.

567—92.11(455B) Loan agreement and repayment policy.

92.11(1) *Loan policy.* The prime purpose of SRF loan assistance is for construction of facilities necessary to solve existing pollution problems. Municipalities must qualify for placement on the State Project Priority List according to 567—Chapter 91.

92.11(2) *Loan terms and conditions.* Loan terms shall include, but not be limited to, the following:

a. Purpose of payments. The recipient shall use the proceeds of the SRF loan solely for the purpose of funding the project. Timely disbursements from the loan shall be made to contractors.

b. Costs. All costs must be documented to the satisfaction of the director before proceeds can be disbursed. Records should be maintained in accordance with subrule 92.8(3).

c. Applicable interest rate. Loans made to recipients shall bear interest at a fixed rate of 3 percent per annum from the date of origination of the loan.

d. Repayment. The maximum repayment period allowed is 20 years. Principal repayments will commence not later than one year after project completion, generally on a level debt service schedule. Adjustments of maturities may be granted to enable a recipient to conform its loan terms to its existing debt obligations, but the average life of the principal installments to be made under the combined repayment schedules shall not be longer than it would be if the total principal amount to be outstanding was repaid on a level debt service basis over the same period. No prepayment of the loan principal may be made within the first ten years of the loan term, other than those repayments resulting from a loan agreement adjustment based on final costs.

e. Security. The loan shall be secured by a first lien upon the dedicated source of repayment which may rank on a parity basis with other obligations.

The dedicated source of repayment is expected to be the net revenues of the municipal sewage utility plant and the system of the recipient with the loan being secured by a first lien on said net revenues. Revenue-secured loans may rank on a parity basis with other outstanding obligations or, with the approval of the director and the authority, may be subordinate in right of payment to other outstanding revenue obligations of the recipient. Subordinate loans shall be approved only if the revenues of the recipient's utility system are expected to be at least 105 percent of the amount of the combined maximum annual debt service on the outstanding obligations and subordinate loan. Loans also may be secured by a general obligation of the recipient providing for a levy of taxes to repay the loan. Recipients shall not be required to maintain any debt service reserve fund or improvement fund with respect to their loans.

f. Loan initiation fee. A fee of 1.0 percent of the amount of the loan will be payable on the date the loan agreement is entered.

g. Annual loan servicing fee. A fee of 0.25 percent of the loan principal will be due at the time of each annual loan repayment.

h. Adjustment. Provision for adjustment of the loan amount based on final costs at completion of construction.

i. Applicable laws. The recipient shall agree to comply with all applicable laws, rules, and regulations of the department, the authority, or other state, federal and local jurisdictions concerning the financing, construction, operation, maintenance, and use of the wastewater facilities.

j. Delinquency provisions. Failure of the recipient to repay the loan in accordance with the schedule contained in the loan agreements will result in the loan being declared in default. Should a loan be declared in default, the director shall take legal action to collect amounts past due. Also, other state agencies will be notified and actions will be taken to preclude the recipient from receiving other grant or financial assistance from them until such time that all delinquent payments have been recovered.

92.11(3) Financial requirements.

a. Dedicated repayment source. The recipient shall establish sufficient revenue sources that are acceptable to the director for the repayment of the loan.

b. Project accounts. The recipient shall maintain separate financial records according to generally accepted government accounting standards for construction cost accounting, operating revenue and for loan repayments.

c. Audit. The authority or an independent firm acceptable to the authority may conduct an audit on all projects assisted by CWSRF loan funds to establish conformance with loan terms and conditions and the requirements of the Clean Water Act. Audit authority includes access to all files and documents associated with the project.

d. Revenue pledge. To ensure repayment of obligations according to the terms of the loan agreement, the recipient shall agree to impose, collect, and increase, if necessary, user charges, taxes, or other dedicated revenue sources identified for the loan repayment in order to maintain annual net revenues at a level equal to 110 percent of the amount necessary to pay debt service on all revenue obligations during the next fiscal year. In case of loan default, the state shall have authority to require revenue adjustment to collect delinquent loan payments.

[Filed emergency 9/26/88—published 10/19/88, effective 9/26/88]

[Filed 7/19/91, Notice 5/15/91—published 8/7/91, effective 9/11/91]

[Filed emergency 3/27/92—published 4/15/92, effective 3/27/92]

[Filed 5/1/98, Notice 2/11/98—published 5/20/98, effective 6/24/98]

[Filed emergency 10/26/01—published 11/14/01, effective 10/26/01]