

## CHAPTER 92

### CLEAN WATER STATE REVOLVING FUND

**567—92.1(455B) Statutory authority.** The authority for the Iowa department of natural resources to administer the clean water state revolving fund (CWSRF) to assist in the construction of wastewater treatment facilities and water pollution control projects 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 water and groundwater of the state to prevent, abate and control pollution. As a part of that general responsibility, the department and the Iowa finance authority are jointly delegated the administration of: (1) the clean water state revolving fund (CWSRF) to assist in water pollution prevention and abatement and water quality protection projects pursuant to the Clean Water Act, and (2) the drinking water facilities revolving loan fund (DWSRF) described in 567—Chapter 44. A project must comply with this chapter to be eligible for a CWSRF loan. This chapter provides 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. Definitions provided in 567—Chapter 90 apply to this chapter.

Section 603(c) of Title VI of the Clean Water Act allows the use of state revolving funds to assist municipalities to construct publicly owned treatment works and to implement a nonpoint source pollution management plan as provided for in Section 319 of the Clean Water Act. Nonpoint source water quality programs are described in 567—Chapter 93.

Water pollution control projects that provide the best water quality improvements or protection based on the rating system and are ready to proceed are to be funded. This chapter provides for the general rules of practice for the department's administration of the CWSRF program based on this principle.

**567—92.3 Reserved.**

**567—92.4(455B) General policy.** Loans of up to 100 percent of the eligible costs of water pollution control projects will be made available pursuant to the requirements of these rules, rules established by the authority, and Title VI of the Clean Water Act.

**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.

The department may enter into agreements with other private, public or quasi-public agencies to assist with the implementation of the CWSRF program.

**92.4(2) Set-aside funding.** Consistent with the pollution sources identified in the department's nonpoint source management program, set-asides will be used to target assistance to nonpoint source activities that are contributors of pollutants to Iowa's waters. Set-asides will be used for assisting construction of water pollution control facilities for livestock operations, local water protection projects, onsite wastewater management systems and general nonpoint source projects. The amount for each set-aside will be determined in the intended use plan.

**92.4(3) Decisions.** 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(4) Reserved.**

**92.4(5) Fundable project determination.** Projects or activities qualifying for CWSRF assistance shall be identified in the IUP. Only those projects or activities on the state project priority list developed pursuant to 567—Chapter 91 may be considered fundable. CWSRF assistance will be available to point source projects in priority order. Funding for nonpoint source activities will be established in the intended use plan.

**92.4(6) 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(7) Federal funding coordination.** Projects may use CWSRF funds to complete the financing projects partially funded by other federal programs such as Environmental Quality Incentives Program and Community Development Block Grants. 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 Reserved.**

**567—92.6(455B) Intended use plan management.**

**92.6(1) Intended use plan preparation.**

a. *Development.* The department shall prepare an intended use plan (IUP) at least annually and on a quarterly basis as needed. The IUP will be subject to a public hearing and approved by the commission.

b. *Notification.* A public hearing process is part of the IUP adoption process to provide opportunity for public participation. Notice is published in a newspaper of general circulation prior to the public hearing, and an announcement is released to television and radio stations. A general notice is also made to all applicants and interested agencies and organizations. The notice explains the purpose of the IUP and how additional information may be obtained.

c. *Comments.* Comments regarding the proposed IUP will be accepted during the notice period, at the public hearing and in writing for five days following the public hearing. After evaluation of all pertinent comments, the IUP will be revised, if necessary, and recommended for approval by the environmental protection commission. Subsequent approval by the EPC will establish the IUP to be used for loan assistance.

**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. *State project priority list.* The state project priority list contains the projects and set-asides eligible for CWSRF loans. The state project priority list will include, for point source projects, the name of the eligible applicant, any applicable NPDES permit number and the projected amount of loan assistance. For nonpoint source set-asides, the IUP will include the name of the program and amount set aside.

b. *Fundable list.* The fundable list includes projects scheduled for loans from funds available during the fiscal year. Projects will be considered in priority order for placement on the fundable list. Subsequent segments of a project which has been awarded financial assistance for Category I and Category II needs will be placed on the fundable list ahead of other new projects whose schedules also would allow funding during the fiscal year. The fundable lists of point source projects and nonpoint source set-asides shall be listed in priority order and shall include a schedule of estimated disbursement of funds, preliminary identification of point source projects that may undergo an environmental impact statement, and the need category(ies) of the projects. The department will consider the following in developing the list of fundable projects for the intended use plan:

- (1) How the project conforms to the short- and long-term goals of the CWSRF;
- (2) The priority rating of the point source project;
- (3) Whether a point source 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 eligible entity's priority is based;
- (5) The eligible entity's financial capability to service the loan, to provide operation and maintenance, to provide replacement reserves, and, if required, to provide debt service reserves;
- (6) The eligible entity's statement of willingness to accept all loan terms and conditions;

(7) The funds available, department priorities and the administrative capacity of the department; and

(8) The applicant's conformance to process guidelines provided by the department.

c. *Contingency list.* A contingency list will be included so that point source projects on the contingency list could become fundable should a fundable project not proceed in a timely manner.

d. *Goals.* The IUP will include the long- and short-term goals of the CWSRF.

e. *Supported activities.* The IUP will include information on the types of activities to be supported by the CWSRF. The IUP will identify requests for planning and design loans and funds to be directed to the nonpoint source set-asides to implement Iowa's nonpoint source management program.

f. *Assurances.* The IUP will include 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; and

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

g. *Rates, terms and fees.* Loan interest rates and terms, interest rates and terms for linked deposit programs, and loan origination fees and servicing fees will be established in the IUP.

h. *Amendments.* The IUP will include the method to be used by the department if the IUP is amended.

i. *Consistency with water quality management plans.* Projects must be consistent with any Iowa water quality management plans in order to be considered for inclusion on the state project priority list.

**92.6(3) Priority for loan assistance.** A fundable project must be technically and administratively complete. A community is responsible for complying with the technical procedures for facility planning and preparation of plans and specifications, including department approval of those documents.

**92.6(4) Annual update.** The state project priority list will be reviewed at least annually or quarterly as needed to update schedules and project cost estimates.

**92.6(5) Notification of revisions.** The department will notify, in writing, all communities that are removed from or placed on an approved fundable list based on revisions.

**92.6(6) Special considerations.** Exemptions to the point source rating criteria may be considered by the department, and funding variances may be granted by the commission for projects that have unique or unusual circumstances but that do not logically fit into the criteria. The commission may grant interest rate reductions or other favorable loan incentives to applicants that sponsor a project that improves impaired waters or restores the physical, chemical or biological integrity of receiving waters impacted by the wastewater treatment facility. Exemptions to the nonpoint source rating criteria may be considered by the department, and funding variances may be granted by the commission for projects that have unique or unusual circumstances which may not logically fit the criteria and are consistent with the short- or long-term goals of the IUP. Examples of projects that may qualify for exemptions and variances are projects targeted to improve impaired waters or projects where the purchase of land or conservation easements by conservation agencies is targeted to improve impaired waters.

## **567—92.7(455B) Point source project procedures.**

**92.7(1) Application forms.** An applicant may request an application package from the department. The applicant shall complete the application for placement on the IUP and shall provide documentation on the project. Forms may be obtained from the Environmental Services Division, Iowa Department of Natural Resources, Henry A. Wallace Building, 502 E. Ninth Street, Des Moines, Iowa 50319-0034. Forms may also be downloaded from [www.iowasrf.com](http://www.iowasrf.com).

**92.7(2) General requirements.** In addition to completing the IUP application and providing documentation required in 92.7(1), the applicant must include the following items in a complete CWSRF application for point source projects:

a. Two copies of the facility plan. The facility plan shall be certified by a professional engineer licensed to practice in Iowa and shall be in conformance with Chapter 11 of the Iowa Wastewater Facilities Design Standards (567—paragraph 64.2(9) “b”);

b. A schedule for submission of plans and specifications for the project; and

c. A project construction schedule.

**92.7(3) Timing.**

a. All applications received by the department for eligible projects will be given a score using the rating criteria in 567—Chapter 91 and will be placed on the state project priority list. Applications may be submitted on an ongoing basis.

b. Applications received after the drafting of the IUP will not be placed on the state project priority list but will be considered for loan assistance when the next IUP is prepared.

**92.7(4) Project initiation conference.** The department may require the applicant or the applicant’s representative to meet at a location designated by the department. The eligible applicant’s official representative (and usually the applicant’s consultant) will meet with the department to discuss:

a. CWSRF program policies, procedures, and guidelines;

b. Allowable costs;

c. Wastewater treatment alternatives and technologies;

d. Environmental impacts and review considerations;

e. Public participation;

f. Scheduling; and

g. Other information as needed.

**92.7(5) Review criteria for point source projects.** The department shall review CWSRF applications from eligible applicants and verify the following items:

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

b. The applicant has prepared an adequate facility plan report;

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

d. The applicant has adopted 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 department has reasonable grounds to believe that an applicant’s wastewater treatment facilities are not viable, the department may require the applicant to submit management and financial plans as prescribed in Iowa Code section 455B.174; and

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

**92.7(6) 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. 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. Cost of service lines and in-house plumbing;

c. Administrative costs of the recipient;

d. Purchase of vehicles and tools;

e. Land purchase and easement or rights-of-way costs;

f. Pretreatment program development costs unless required by federal regulations; and

g. Operation and maintenance costs.

**92.7(7) Audit and inspection.** The recipient shall provide access at all times for the department, the authority, the state auditor, and the U.S. EPA Office of the 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.

**92.7(8) Cross-cutting laws.** Other federal and state statutes and programs may affect a CWSRF project.

**567—92.8(455B) Point source project requirements.** All wastewater treatment system projects receiving assistance from the CWSRF which entered into binding loan commitments on or after October 1, 1994, and did not initiate construction of the projects in whole or in part prior to October 1, 1994, shall meet the following requirements:

**92.8(1) Planning.** The planning phase of a project consists of those necessary plans and studies which directly relate to facilities needed to comply with enforceable requirements of the Clean Water Act and state statutes. This phase 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. Facility plan.* The facility plan must contain 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. Environmental review.* Loan recipients shall conduct environmental review of projects using procedures in 40 CFR Part 6, July 1, 2002, as a part of facility planning. The 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, 2002, a potential applicant may request formal determination under 40 CFR Part 6. All of 40 CFR Part 6, July 1, 2002, pertaining to Procedures for Implementing the Requirements of the Council on Environmental Quality of the National Environmental Policy Act, is hereby adopted by reference and incorporated herein. However, all references to the U.S. Environmental Protection Agency as performing acts or reviews shall be substituted with references to the department for the purposes of this chapter.

**92.8(2) Point source project design and construction.** The project design and construction phase must include the following:

*a. 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.

*b. 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), July 1, 2002. 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 smaller tasks or quantities to permit maximum participation of small, minority, and women's business enterprises;
- (4) Establishing delivery schedules, where requirements of the work allow, 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.

*c. Site.* When it is necessary that real property be acquired as part of the project and within the project period, the recipient may be required to submit documentation of the acquisition, including the legal description, the date the property was acquired, and an appraisal report by a qualified appraiser. If required, submittal to the department is to occur prior to contract award.

*d. Project changes.* Prior to the final loan disbursement, the recipient must submit to the department for approval all modifications to the project including changes to the plans and specifications

and changes in the contract (change orders). 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.

*e. 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.

These rules are intended to implement Iowa Code sections 455B.291 to 455B.299.

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