

200 KAR 17:050. Clean Water State Revolving Fund.

RELATES TO: KRS Chapter 224A, 33 U.S.C. 1285, 1288, 1296, 1313, 1329, 1383, 40 C.F.R. 35.3140

STATUTORY AUTHORITY: KRS 224A.070(1), 224A.113, 33 U.S.C. 1383

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224A.070(1) and 224A.113 authorize the Kentucky Infrastructure Authority to promulgate administrative regulations to implement KRS 224A.111. This administrative regulation governs the application for and provision of financial assistance to governmental agencies for the planning, design, and construction of projects funded from the Clean Water State Revolving Fund.

Section 1. Definitions. (1) "Applicant" means any governmental agency that has submitted an application to the authority for financial assistance from the Clean Water State Revolving Fund.

(2) "Application" means the information submitted by an applicant to the authority to obtain financial assistance, including the need for a specific project or infrastructure, and including financial information necessary to determine eligibility for financial assistance from the Clean Water State Revolving Fund.

(3) "Assistance agreement" is defined by KRS 224.011(3).

(4) "Authority" is defined by KRS 224A.011(4).

(5) "Cabinet" means the Environmental and Public Protection Cabinet established in accordance with KRS 224.10-100.

(6) "Clean Water Act" is defined by KRS 224A.011(12) and is otherwise known as the Federal Water Pollution Control Act.

(7) "Clean Water State Revolving Fund" means the federally-assisted wastewater revolving fund created by KRS 224A.111. The Federally-assisted State Revolving Fund was established by the Water Quality Act of 1987 (amending the Clean Water Act), Pub.L. 100-4, and replaced the traditional federal Municipal Wastewater Treatment Construction Grant Program to include other water quality needs, including nonpoint sources. This fund is now designed to address the greatest remaining environmental challenges to improve Kentucky's water resources.

(8) "Closing date" means the date established by the authority for execution of the assistance agreement upon satisfaction of the conditions contained in the conditional commitment letter.

(9) "Conditional commitment letter" means a letter delivered to the applicant stating the authority's commitment to provide financial assistance under specifications and subject to the satisfaction of certain conditions by the applicant on or before the closing date.

(10) "Kentucky eClearinghouse" means the automated Kentucky State Clearinghouse coordinating the Federal Executive Review Process and Kentucky Intergovernmental Review Process, for which the Governor's Office for Local Development has been designated as the single point of contact for federal or state funding financial assistance as required by KRS 147A.021(3)(k).

(11) "Kentucky state data center" means the agency within the Urban Studies Institute of the University of Louisville designated by the Commonwealth to serve as the repository and analyst of data and information generated by the United States Census Bureau.

(12) "Median household income" means the statistical middle value in household income, considering all households in Kentucky with an equal number of households above and below the middle value, as determined by the Kentucky State Data Center.

(13) "Municipality" means a governmental unit as defined in 33 U.S.C. 1362(4).

(14) "NEPA-like process" means the state environmental review process that is functionally equivalent to the review undertaken by the U.S. Environmental Protection Agency under the National Environmental Policy Act, 42 U.S.C. 4321 et seq.

(15) "Project priority list" means the integrated list of projects developed annually by the cabi-

net, which includes a priority ranking of applicants eligible for State Revolving Fund funding pursuant to 33 U.S.C. 1381 and 33 U.S.C. 1296, and a list of activities eligible for funding under 33 U.S.C. 1329 and 33 U.S.C. 1330.

(16) "Regionalization" means the creation of expanded service areas which take in a large geographic area of multiple systems; the creation of multijurisdictional utility commissions, special districts, authorities, or corporations; the utilization of interlocal cooperation agreements; the consolidated operation or management of multiple systems which may include regional facilities, smaller systems, or onsite systems; or the merger, consolidation, or combination of two (2) or more existing facilities or systems.

(17) "Replacement reserve fund" means the special depreciation fund that may be established and funded by an applicant in connection with financial assistance from the Clean Water State Revolving Fund.

(18) "Safe Drinking Water Act" means the federal Safe Drinking Water Act, 33 U.S.C. 300 f-j.

Section 2. Eligible Applicants. Any governmental agency shall be eligible to apply for financial assistance for planning, design and construction of eligible projects described in Section 3 of this administrative regulation.

Section 3. Eligible Projects. (1) Funds in the Clean Water State Revolving Fund shall be used for:

(a) Planning, design and construction of wastewater or stormwater collection, conveyance, and treatment facilities;

(b) The implementation of nonpoint source pollution control management programs;

(c) Refinancing or buying eligible debt obligations of municipalities and intermunicipal and interstate agencies within Kentucky at or below market rates, if the debt obligations were incurred after March 7, 1985;

(d) Guaranteeing or purchasing insurance for a local obligation to improve credit market access or reduce the interest rate of the obligations;

(e) Transferring fund assets between the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund as allowed by the Clean Water Act and the Safe Drinking Water Act;

(f) Providing a source of revenue or security for the payment of principal and interest on revenue or general obligations bonds issued by the state if the proceeds of the sale of the bonds will be deposited in the fund; and

(g) Purchase of another wastewater system eligible under 33 U.S.C. 1383(d).

(2) Fundable projects may include any applicant's project eligible for funding under 33 U.S.C. 1383.

(3) Only projects identified on the cabinet's project priority list shall be considered for funding.

(4) Funds in the Clean Water State Revolving Fund shall not be used for:

(a) Laboratory fees and other monitoring expenses; and

(b) Operation and maintenance expenses.

Section 4. Submission Requirements. (1) Projects proposed to be placed on the project priority list shall be submitted to the cabinet.

(2) After inclusion on the project priority list, a complete application package, including all supporting documentation, shall be submitted to the authority for consideration for financial assistance from the Clean Water State Revolving Fund.

(3) The procurement of professional services and construction contracts shall conform to KRS Chapter 45A or 424. Allowable engineering service fees shall be determined using procedures similar to those used by federal agencies conducting similar loan programs.

Section 5. Criteria for Ranking and Recommending Eligible Projects. (1) The cabinet shall determine the priority for funding eligible projects to be included on the project priority list based on criteria established in 33 U.S.C. 1296; and

- (a) Whether the project promotes compliance with the Clean Water Act and KRS Chapter 224;
- (b) The impact the wastewater project has on any existing drinking water supply;
- (c) Outstanding resource waters in the area as defined by 401 KAR 5:030, Section 1;
- (d) Populations to be served that presently do not have sewer systems available.

(2) The authority and the cabinet shall take into consideration the following factors in recommending projects for funding:

(a) Whether the cost of completing the wastewater project is reasonable given the geographic location of the project, current pricing trends, required professional services, and any other factors that may have a bearing on the wastewater project.

(b) Whether the most beneficial and cost effective project has been planned for the use of the Clean Water State Revolving Fund.

(c) Whether the project will result in improved public health and environmental protection.

(d) Whether the project will result in greater efficiency and effectiveness.

Section 6. Project Requirements. (1) In addition to other requirements stated in this administrative regulation, the following specific requirements shall be met:

(a) If the related sewer collection system is subject to excessive inflow/infiltration, assurance for necessary repairs shall be provided.

(b) The project is consistent with plans developed pursuant to the applicable requirements under 33 U.S.C. 1285, 33 U.S.C. 1288, 33 U.S.C. 1313, and 33 U.S.C. 1329.

(c) The applicant has developed an adequate user charge system and the applicant has the legal, institutional, managerial and financial capability to construct, operate and maintain the wastewater project.

(d) The project has undergone appropriate reviews to ensure compliance with the state NEPA-like review process as required by 40 C.F.R. 35.3140.

(e) The applicant shall ensure compliance with all applicable federal laws and regulations.

(f) The applicant shall certify that it has complied with the procurement requirements as described in the application

(g) Construction contracts shall be awarded to the lowest responsive responsible bidder.

(2) The NEPA-like review process shall include consideration of regionalization, and shall be reviewed through the Kentucky eClearinghouse process.

Section 7. Provisions for Financial Assistance. (1) Upon completion of the credit review by the authority's staff, the application shall be submitted to the authority's board for action, subject to the cabinet's priority ranking and favorable recommendation of the project. The credit review shall include an analysis of the applicant's ability to generate sufficient revenue based on financial statements provided by the applicant to cover operating costs and to repay the required principal, interest, fees, and reserves required by receipt of the financial assistance. The cabinet's recommendation shall be based on the project's compliance with the technical and environmental requirements of the Clean Water Act.

(2) If the authority approves the application, a conditional commitment letter shall be issued to the applicant. This letter shall set forth the conditions and documentation required by the authority prior to execution of an assistance agreement. Funds shall not be provided until the assistance agreement is fully executed and any special conditions included therein met.

(3)(a) The authority shall establish interest rates annually based on:

1. Prevailing market conditions;
2. Availability of funds; and
3. Demand for financial assistance.

(b) The executive director of the authority shall recommend rates to the authority board for approval at least annually.

(c) The rate of interest on financial assistance shall be set forth in the conditional commitment letter.

(d) Interest rates shall be offered at the:

1. Standard rate; and
2. A nonstandard rate, which may be lower than the standard rate.

(e) Applicants shall receive the standard rate of interest unless they qualify for the nonstandard rate.

(f) The authority may establish one (1) or more nonstandard rates and shall use the following criteria in establishing a nonstandard rate:

1. Whether the median household income of the applicant's jurisdiction or service area as published by the Kentucky State Data Center is below the state median;
2. Whether the median household income of the service area as identified by income surveys is below the state median;
3. Regionalization as set out in Section 1(16) of this regulation and verified by the authority;
4. The existence of an order or judgment addressing environmental noncompliance; or
5. Other criteria relating to public health or safety, environmental concerns, or financial considerations that the authority may determine.

(g) If the nature of a project financed by the authority's financial assistance causes interest on any authority bonds issued to fund the project to become taxable, the authority may consider adjustments in the interest rate to reflect the additional costs of authority funds.

(4) Principal on any financial assistance shall be repaid over a period not to exceed federal requirements or the life of the facilities being financed. Repayment of principal shall commence within one (1) year of the initiation of operation of the project or upon another date as many be set forth in the financial assistance agreement. Principal shall be payable semiannually, unless the authority establishes a more frequent payment schedule based on the credit review. The financial assistance repayment period may be equal to less than the federally-permitted maximum at the discretion of the authority.

(5) Interest payments on the outstanding principal amount of the financial assistance shall be paid semiannually and shall commence within six (6) months of initial disbursement of financial assistance proceeds, unless the interest payments are directly dependent upon revenues generated from the project. If interest payments are directly dependent upon revenues, interest payments shall begin within six (6) months after the project is completed, and interest to cover the authority's cost money during the construction period may be added to the amount of the financial assistance.

(6) The principal amount of financial assistance shall be equal to the amount approved by the authority's board financial assistance. The amount may be adjusted by the authority's executive director up to ten (10) percent of the amount stated in the conditional commitment letter without further actions by the authority, subject to the availability of user fees sufficient to service the debt and authority funds to provide the increase.

(7) To ensure adequate funds for major maintenance and replacement of the projects funded by this program, the applicant may be required to set aside annually to a replacement reserve fund from current revenues, after taking into account costs of operations and maintenance and debt service requirements, an amount to be determined by the authority. Monies may be withdrawn from the account if major maintenance or replacement of equipment in excess of budgeted

amounts is required.

(8) The financial assistance agreement between the authority and applicant shall contain terms and conditions as the authority deems necessary to maintain the financial integrity of the Clean Water State Revolving Fund according to the circumstances of each project.

Section 8. Submission and Review of Requisition for Funds. (1) The requisition for funds with the required invoices attached shall be submitted to the authority and one (1) copy of each requisition for funds with the required invoices attached shall be submitted to the cabinet.

(2) The cabinet shall review requisitions for funds for compliance with federal and state requirements as defined in the conditional commitment letter and assistance agreement before approving payment by the authority.

Section 9. Financial Assistance Closing. (1) If an applicant does not meet all condition for financial assistance closing and take action to award contracts for the project as outlined in the conditional commitment letter, the financial assistance commitment shall expire.

(2) An extension may be granted upon request of the applicant, if the authority staff, after consultation with the cabinet, determines that circumstances warrant the granting of the extension. If the extension is denied, the loan commitment shall be rescinded. If a request for a time extension is granted, but all the conditions still cannot be met during the extension period, the loan commitment may be rescinded.

(3) The applicant may reapply for a loan for any wastewater project for which the loan commitment has expired or has been rescinded under this section. An applicant that reapplies for a loan for substantially the same project shall be given, at the authority's discretion, the standard or hardship interest rate applicable when reapplying or the initial rate assigned, depending on affordability. Except, the interest rate shall not be lower than the initial rate assigned to the project.

Section 10. Financial Assistance Conditions. (1) In order to establish and maintain or improve technical, financial, and managerial capacity, the applicant shall:

(a) Adopt a uniform system of accounting, consistent with nationally recognized standards and approved by the authority, which includes an annual budget, a chart of accounts, and a monthly management reporting;

(b) Certify that rates and charges for wastewater service are, or will be adjusted to be, adequate to cover costs and that same are based upon the cost of providing such service; and

(c) Comply with other financial, managerial, and technical conditions as established by the authority's board.

(2) If an applicant is found by a administrative or court order to have violations which were cited by the cabinet or other regulatory agency, the applicant shall be subject to a financial review by the authority, and may be subject to a management assessment or other review by the authority and shall comply with the recommendations contained in the review or assessment.

Section 11. Authority to Administer the Program. The authority staff shall monitor the assistance agreements and require that financial reports be made available to the authority by the governmental agency at intervals as shall be deemed necessary by the authority based on financial performance or the compilation of a program report. The authority staff shall monitor the cash flows of the wastewater project, and perform all actions that shall be required to assure that the agreements continuously meet the program standards established by this administrative regulation.

Section 12. Administrative Fees. At the beginning of each state fiscal year, the authority shall

set an administrative fee to be charged for all financial assistance approved during that year. The fee shall apply to the unpaid balance of the financial assistance and shall be used to defray the authority's expenses of servicing the financial assistance and necessary operating expenses of the program.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Fund A Loan Form", 2006; and

(b) "Request for Payment", 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Infrastructure Authority, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained on the Kentucky Infrastructure Authority Internet Web site at <http://kia.ky.gov>. (17 Ky.R. 3327; 679; eff. 8-22-91; 22 Ky.R. 104; 589; eff. 8-24-95; 32 Ky.R. 1319; 1906; 2239; eff. 7-7-2006.)