

This document was created using information obtained at:

<https://casetext.com/regulation/new-york-codes-rules-and-regulations/title-21-miscellaneous/chapter-xlii-new-york-state-environmental-facilities-corporation/part-2602-state-clean-water-revolving-fund-regulations>

## **N.Y. Comp. Codes R. & Regs. tit. 21**

### s 2602.1 - Purpose, scope and applicability

(a) The purpose of this Part is to provide rules and procedures for the New York State Environmental Facilities Corporation (corporation) to provide financial assistance to eligible recipients from the New York State Water Pollution Control Revolving Fund, also known as the Clean Water State Revolving Fund (CWSRF), created by chapter 565 of the Laws of 1989, as amended.

(b) This Part, in conjunction with the applicable rules and regulations of the New York State Department of Environmental Conservation (department), 6 NYCRR Part 649 and, with respect to the linked loan project, the rules and regulations of the New York State Department of Agriculture and Markets (DAM) and the New York State Department of State (DOS), applies to all recipients seeking or receiving financial assistance from the CWSRF and to the activities of the corporation in the discharge of its duties related to the CWSRF.

21 CRR-NY 2602.1 Current through July 31, 2018

### s 2602.2 - Definitions

(a) Terms used in this Part or to be used in complying with this Part have the following meanings:

(1) Act means the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 USC 1251 et seq., as amended and as may be amended, and as amended by the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (ARRA).

(2) Additional subsidization means forgiveness of principal, a negative interest loan or a grant to be provided in accordance with the act.

(3) Administrator means the administrator of the United States Environmental Protection Agency (EPA) or the chief executive officer of such agency or any successor agency or department or any authorized representatives of the administrator.

(4) Allocation means the amount of moneys of the CWSRF allocated in accordance with section 17-1909(3) of the ECL, or other security or funds used to reduce a recipient's total financing costs for a project. Linked deposits shall not constitute an allocation hereunder.

(5) Allowable costs are all costs of a project which the corporation determines are:

(i) properly allocable to that project in accordance with applicable laws and regulations; and

(ii) not annual project operation costs, including but not limited to, those for maintenance, or replacement and repair of minor equipment.

(6) Binding commitment means a legal obligation made pursuant to and subject to the terms of a project financing agreement (PFA) to provide CWSRF assistance to one or more recipients.

(7) Business day means any day on which New York State offices are open to conduct business.

(8) Commencement of construction means the date that:

(i) a notice to proceed is issued by the recipient to the contractor following the execution of the contract between the recipient and such contractor for the erection, building, acquisition, alteration, reconstruction, improvement, enlargement or extension of the project; or

(ii) in the event that the project will be built by recipient employees (force account) in lieu of a contractor, the first day that a work crew occupies the project; or

(iii) in the event that the project is a contract to purchase supplies, material or equipment, a binding purchase agreement is executed between the contracting parties and the recipient has provided evidence satisfactory to the corporation of the execution of such agreement; or

(iv) in the event that the project consists of the purchase of land, the closing date on which the first parcel is purchased by and title conveyed to the recipient, pursuant to and subject to the terms of a PFA; or

(v) at the election of the corporation, such other date as may be permitted by applicable law.

(9) Commissioner means the commissioner of the department.

(10) Completion of construction means the date that:

(i) the last major construction contract ends, as indicated in the notice to proceed, or if one is not given, the date calculated by adding the contract completion time, as specified in the executed contract between the recipient and the contractor, to the notice to proceed date, or the date construction was actually completed, if prior. The completion date may be extended by the recipient by an executed change order formally extending the contract completion date, or by written notice justifying the extension of time; or

(ii) in the event that the project was built by recipient employees (force account), the last day the work crew actually occupied the project; or

(iii) in the event that the project is a contract to purchase supplies, materials or equipment, the date on which the supplies, materials or equipment are delivered to the recipient and the warranty period, if any, begins; or

(iv) in the event that the project consists of the purchase of land, the closing date on which the last parcel is purchased by and title conveyed to the recipient, pursuant to and subject to the terms of a PFA.

(11) Comptroller means the Comptroller of New York State.

(12) Construction means the erection, building, acquisition, alteration, reconstruction, improvement, enlargement or extension of a project; and all other actions necessary and consistent with the project.

(13) Contingency project is a project included in the intended use plan (IUP) below a funding line for which CWSRF assistance will be provided if funds become available.

(14) Corporation means the New York State Environmental Facilities Corporation.

(15) CWSRF assistance means any financial assistance provided from the CWSRF consistent with the requirements of applicable law, including "financial assistance to municipalities," as defined in section 1285-j(4) of the Public Authorities Law (PAL), including additional subsidization, and such other forms of assistance as permitted by the act, in consultation with the director of the Division of Budget and the commissioner. CWSRF assistance may also include linked deposits.

(16) Department means the Department of Environmental Conservation of New York State.

(17) Design includes, but is not limited to, necessary design calculations, selection of equipment and the preparation of construction drawings, specifications and contract documents.

(18) Direct financing means a financing made available from moneys deposited in the CWSRF other than from proceeds of the corporation's bonds or notes.

(19) Direct interest rate means a rate of interest no higher than the market rate of interest.

(20) Disbursement means a transfer of CWSRF assistance moneys to a recipient from accounts held by the corporation's custodian, as identified in the financing documents, in accordance with an executed PFA.

(21) ECL means chapter 43-B of the Consolidated Laws of New York State, entitled the Environmental Conservation Law.

(22) Engineering report means the document or documents, which determines the technical and economic feasibility of a project. For purposes of land acquisition and related projects, engineering report means the land acquisition plan or the management plan prepared by the recipient in a form acceptable to the corporation. Such land acquisition plan or management plan must identify the relationship of each property to be acquired or purchased to the water quality protection or enhancement purposes identified in section 319 or 320 of the act.

(23) Environmentally significant project (ESP) means a project that the commissioner has determined to be environmentally significant. In so designating an ESP, the commissioner shall consider all relevant factors, which shall include, but need not be limited to, an assessment of:

(i) public health and safety;

(ii) protection of environmental resources;

(iii) with respect to a municipality's project, population affected;

(iv) attainment of State water quality goals and standards; and

(v) compliance with State and Federal law, rules and regulations.

(24) Equivalency project means a treatment works project that must be constructed in compliance with the provisions of the act applicable to projects funded from Federal capitalization funds or their equivalent.

(25) Equivalent dwelling unit means a system user that produces a wastewater flow (measured in gallons per day) and/or strength (measured in pounds per day of various pollutants) equivalent to a typical single-family residence, which serves as a means of proportioning system usage and costs.

(26) Estimated service charge means the total annual estimated cost of service to a household or equivalent dwelling unit in the area served by the project, which includes debt service and all other annualized charges.

(27) Facilities plan means a document that includes those elements required in an engineering report, and demonstrates that the mandatory planning requirements of title II of the act for equivalency projects have been met.

(28) Federal capitalization funds means funds deposited in the CWSRF pursuant to a Federal capitalization grant according to the provisions of title VI of the act or other Federal assistance provided pursuant to any appropriation for the CWSRF.

(29) Financing means a loan, a purchase of debt obligations or other financing.

(30) Hardship assistance means CWSRF assistance, as may be authorized by law, including, without limitation, a reduced interest rate financing, forgiveness of principal, a negative interest

loan and/or a grant, provided by the corporation to a recipient in those instances where the corporation, in its discretion, determines financial hardship exists.

(31) Intended use plan (IUP) means a plan identifying the intended uses of the estimated amounts available in the CWSRF, including but not limited to: a list of potentially eligible projects; a description of the short-term and long-term goals and objectives of the CWSRF; information on the types of activities to be supported including a description of project categories, terms of CWSRF assistance, eligible recipients, and the criteria and method established for the distribution of funds. The IUP shall be published in accordance with the act, and shall be subject to public review and comment.

(32) Innovative technology means developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significance advancement over the state of the art in terms of significant reduction in life cycle cost of significant environmental benefits through the reclaiming and reuse of water, otherwise eliminating the discharge of pollutants, utilizing recycling techniques such as land treatment, more efficient use of energy and resources, improved or new methods of waste treatment management for combined municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.

(33) Interest rate subsidy means the amount of moneys of the fund credited to the recipient to reduce the interest which the recipient would otherwise be required to pay, as determined by the corporation.

(34) Land acquisition means the purchase of land parcels consistent with the provisions of section 319 and 320 of the act. Land acquisition includes but is not limited to the outright purchase of a fee simple interest in land or the purchase of a conservation easement.

(35) Land acquisition plan or management plan means the plan provided by the recipient, in a form acceptable to the corporation, detailing the land parcel(s) to be acquired or purchased and the corresponding water quality protection or enhancement purpose(s) achieved. The water quality protection or enhancement purposes are provided in section 319 or 320 of the act, the New York State Nonpoint Source Management Plan or any EPA approved national estuary management plan.

(36) Lender means any State or federally-chartered savings bank, savings and loan association, Federal savings bank, Federal savings and loan association, farm credit system institution, or commercial bank or trust company approved by the corporation to accept linked deposits.

(37) Leveraged financing means a financing, including those secured by the CWSRF, made with CWSRF assistance that is made available through the issuance of bonds or notes of the corporation, and shall not include any direct financing.

(38) Linked deposit means financial assistance undertaken by the corporation for the construction of an eligible project through an investment eligible to be held by an eligible lender.

(39) Linked deposit interest rate means a fixed rate of interest which is below the rate of interest for comparable investments in effect at the time the investment is made.

(40) Linked deposit spread means the difference between linked deposit interest rate and the rate of interest for comparable investments available from the lender in effect at the time the investment is made.

(41) Linked loan means a loan for purposes of an eligible project, in an amount equal to a linked deposit and bearing interest at the linked loan interest rate.

(42) Linked loan borrower means a borrower eligible to receive CWSRF assistance in the form of a linked loan.

(43) Linked loan interest rate means a fixed rate below the fixed interest rate the lender would have charged for the loan in the absence of a linked deposit based on its usual credit considerations and shall be calculated by deducting the linked deposit spread from the rate the lender would have charged in the absence of the linked deposit.

(44) Linked loan project means the program for providing CWSRF assistance in the form of linked deposits for the implementation of a management plan established under section 319 of the Federal Water Pollution Control Act related to agricultural operations, the upgrade or replacement of residential and small business on-site wastewater treatment systems with a system approved by the State or local Department of Health, or the abandonment of residential and small business on-site wastewater treatment systems and connection to a sewer, when a sewer becomes available, or another project as may be approved by the corporation and permitted by applicable law.

(45) Linked loan recipient means any person which is:

(i) an individual or small business which is eligible to undertake an eligible project related to residential and small business on-site wastewater treatment systems; or

(ii) an entity receiving or eligible to receive an agricultural assessment pursuant to article 25-AA of the Agriculture and Markets Law which is eligible to undertake an eligible project; or

(iii) any two or more of the foregoing which are acting jointly in connection with an eligible project; or

(iv) another recipient as may be permitted by applicable law.

(46) Long-term financing means a financing other than a short-term financing.

(47) Market rate of interest means the interest rate obtained on the most recent sale of bonds or notes by the corporation for a CWSRF leveraged financing or the interest rate determined by the corporation to be otherwise payable to reflect the current market conditions from time to time without the provision of any interest rate subsidy.

(48) Median household income (MHI) means the MHI published by the U.S. Department of Commerce Bureau of the Census, for which the most recent income data is available. For special districts and other areas for which accurate census data is not available, the corporation may consider other income data, including income surveys.

(49) Municipality means any county, city, town, village, district corporation, county or town improvement district, Indian reservation wholly within New York State, any public benefit corporation or public authority established pursuant to the laws of New York or any agency of New York State which is empowered to construct and operate a project, or any two or more of the foregoing which are acting jointly in connection with a project.

(50) Phased funding means an arrangement agreed to in a PFA by which a recipient proceeds with the construction of an entire project or project segment but receives a binding commitment sufficient to meet the cash flow needs for a project segment or a specific fiscal period rather than the cash flow needs for the entire project or segment.

(51) Planning means the orderly development of a project concept from the original statement of need or purpose through the evaluation of alternatives to a final recommendation on a course of action and measures to implement the selected alternative, including completion of the environmental review process.

(52) Program obligations shall mean bonds, notes or other obligations issued by eligible entities to fund projects eligible for assistance under the CWSRF bearing interest at a market rate of interest.

(53) Project means any activity whose purpose and design is the preservation, protection and/or improvement of water quality, or which implements green infrastructure, water or energy efficiency improvements or other environmentally innovative activities, or other activities permitted by the act, or which implements activities in an approved EPA national estuary management plan, provided such activities are eligible for financing under the act, for which all required Federal and State permits have been, or are expected to be, issued in connection with construction of the project, and which, for projects financed pursuant to section 212 of the act, the commissioner has determined is an eligible project as set forth in ECL section 17-1909. For projects financed pursuant to sections 319 and 320 of the act, certain requirements need to be met, including but not limited to, the water quality benefit to be obtained from the project and its consistency with the New York State Nonpoint Source Management Plan, or how the project implements a recommended activity in the appropriate EPA approved national estuary management plan.

(54) Project financing agreement (PFA) means an agreement, or agreements, between the corporation and one or more recipients with respect to the financing of an eligible project or projects or pre-design planning for such in such forms as may be approved by the corporation from time to time.

(55) Project priority list (PPL) means a list of potentially eligible projects ranked in order of priority developed in accordance with 6 NYCRR section 649.3, and the priority ranking system

scoring criteria contained under 6 NYCRR section 649.13, pursuant to section 17-1909(2) of the ECL.

(56) PAL means chapter 43-A of the Consolidated Laws of New York State entitled the Public Authorities Law.

(57) Recipient means any municipality, or person, including but not limited to any individual, firm, partnership, association, school district, soil and water conservation district, not-for-profit corporation, or other corporation organized and existing under the laws of the State or any other state which is empowered to develop a project, or any two or more of the foregoing which are acting jointly in connection with a project.

(58) Reduced interest rate means an interest rate or rates less than the market rate of interest, including a rate of zero percent, as determined by the corporation from time to time.

(59) Residential and small business on-site wastewater treatment system means a system serving a residence or small business that provides for the treatment and/or disposition of the combination of human and sanitary waste with water not exceeding 1,000 gallons per day.

(60) Small business means any business which is resident in this State, independently owned and operated, not dominant in its field, and employing not more than 100 individuals.

(61) Segment of a project means one or more construction contracts and associated costs that the corporation determines constitute a discrete portion of the project which may be financed and constructed separately from other project segments.

(62) Short-term financing means a financing in which the security provided by the recipient is a short-term note including but not limited to a bond anticipation note.

(63) SPDES permit means the New York State pollutant discharge elimination system permit issued in accordance with title 8 of article 17 of the ECL and regulations adopted pursuant thereto.

(64) State means the State of New York.

(65) State act means chapter 565 of the Laws of 1989, as amended and as may be amended.

(66) Target service charge means the amount, as determined by the corporation, that a household or equivalent dwelling unit having an income equal to the MHI for the area served by the project reasonably could pay annually. Criteria for the corporation's calculation of the target service charge shall be set forth in the annual IUP.

(67) Treatment works project means any type of project described in section 212(2) of the act.



### s 2602.3 - Priority ranking and IUP

- (a) All projects, other than the linked loan project, known to the department or the corporation for which a recipient has expressed interest in CWSRF assistance shall be listed on the PPL in the IUP. Projects shall be ranked on the annual PPL in accordance with the criteria contained in the priority ranking system scoring criteria set forth under 6 NYCRR section 649.13 and the IUP.
- (b) The commissioner shall prepare annually an IUP as set forth under 6 NYCRR section 649.3.
- (c) The corporation in its discretion, upon prior notice to the department, may bypass a project on the IUP upon written notice to the recipient if the project schedule and timing indicates that funding will not be effectively used in the IUP period, or that the recipient will not be able to satisfy any other condition precedent to obtaining funding during the period specified in the IUP.
- (d) The linked loan project shall be evaluated and ranked in accordance with 6 NYCRR section 649.14 and such projects shall be listed in the IUP and may be updated from time to time to identify linked loan recipients.

21 CRR-NY 2602.3 Current through July 31, 2018

### s 2602.4 - Direct financings

- (a) The corporation may or, if so directed by the commissioner, shall provide CWSRF assistance for a project pursuant to PAL section 1285-j(4) if and to the extent the corporation may determine that it is unable, or that it is impracticable to finance all or a portion of a project as a leveraged financing.
- (b) The corporation may provide a direct financing at a reduced interest rate to an ESP only if:
  - (1) the project is listed on the IUP's multi-year PPL, and it has received a project priority score high enough to place it above any funding line on the IUP's annual PPL, except as otherwise permitted by the act;
  - (2) except as otherwise permitted herein, project planning has been completed and the recipient has submitted an approved engineering report;
  - (3) the environmental review process has been completed;
  - (4) any necessary special improvement districts have been formed; and
  - (5) construction of the project has not been completed.
- (c) Interest rates for direct financings shall be determined by the corporation as an interest rate or rates no higher than the market rate of interest.

21 CRR-NY 2602.4 Current through July 31, 2018

## s 2602.5 - Linked deposits

(a) The corporation shall develop and maintain a list of eligible lenders. In consultation with DAM and DOS, the corporation shall develop an application to be provided to eligible lenders. The corporation shall provide eligible lenders with linked deposit program information and application forms as requested by eligible lenders.

(b) The lender shall forward the completed application along with all material terms and conditions of the linked loan to the corporation for its review. Upon receipt of a completed application from a lender, the corporation shall either approve or deny such application based on whether the application is eligible for CWSRF assistance. Upon approval of an application by the corporation, the application shall be forwarded to DAM for concurrent approval for agricultural projects and DOS for concurrent approval of residential and small business on-site wastewater treatment system projects. Failure to approve any application within 30 days of receipt by the corporation shall be deemed a rejection of such application.

(c) Each completed application shall be accompanied by certification from the lender to the corporation certifying that the linked loan interest rate is below the interest rate the lender would have charged for the loan in the absence of a linked deposit based on its usual credit considerations.

(d) Following approval of a linked deposit application, the department shall update the intended use plan to list such project.

(e) After approval by the corporation's board of directors, and receipt of any other approvals necessary, the corporation may execute an agreement with the lender pursuant to terms of an appropriate agreement. Such agreement may include, but not be limited to, the following:

(1) amount(s), interest rate and term of the linked deposit;

(2) provisions requiring that any linked deposit mature upon the event of an uncured default by the linked loan borrower;

(3) provisions requiring that the lender credit linked deposit spread on a monthly basis to the linked loan borrower to offset the interest rate charged on a linked loan;

(4) periodic reporting requirements by the lender regarding the linked loan;

(5) a prohibition against a lender charging any discount, points, origination fees, handling fees, service charges, refinancing fees or penalties or any charge other than those normally charged and in such amounts normally charged by the lender for loans of the type being made.

21 CRR-NY 2602.5 Current through July 31, 2018

## s 2602.6 - Hardship assistance

(a) The corporation may provide hardship assistance in those cases where the corporation, in its discretion, determines financial hardship exists. In making such determination, the corporation may consider whether the total estimated annual service charge for a household or equivalent dwelling unit in the area served by the project, calculated using the maximum interest rate applicable to the project, exceeds the target service charge. The provisions relating to hardship assistance shall be published annually in the IUP.

(b) Hardship assistance may be provided for an eligible municipality's project or allocable portion thereof, and shall be limited to the amounts published in the IUP. Hardship assistance will not be provided for a segment of a municipality's project if the total cost of all segments of such project exceeds the hardship limit. The corporation may provide a written confirmation that a potential municipality qualifies for hardship assistance because of financial hardship.

21 CRR-NY 2602.6 Current through July 31, 2018

s 2602.7 - Innovative projects

The corporation may enter into PFAs with up to three municipalities to receive interest-free financings for the construction of innovative technology demonstration wastewater treatment facilities. No such financing shall exceed \$3 million. The three projects selected shall be those that the commissioner in his discretion determines best demonstrate use of an innovative technology that has been proven reasonably effective on at least a demonstration model basis.

21 CRR-NY 2602.7 Current through July 31, 2018

s 2602.8 - Financing of planning and design costs

(a) CWSRF assistance may be provided for project planning costs prior to completion of that planning. Planning costs may also be included as allowable costs for purposes of CWSRF assistance for any subsequent portion of the project.

(b) CWSRF assistance may be provided for project design costs prior to the initiation of such design.

21 CRR-NY 2602.8 Current through July 31, 2018

s 2602.9 - General project requirements

The corporation shall require each recipient of CWSRF financing to agree to the following, as applicable:

(a) The corporation shall require each recipient to effectively preserve, protect and/or improve water quality, employ good management practices, and fulfill all applicable requirements of: Federal and State laws, regulations, and executive orders, including, without limitation, prevailing wage requirements under article 8 of the Labor Law, all requirements of the PFA, and

all applicable instructions issued by the commissioner or the corporation to ensure that these requirements are met.

(b) The corporation and the department may conduct such reviews, inspections and investigations as they determine necessary to ensure that applicable Federal and State requirements are fulfilled, and that the terms, requirements, and conditions of the PFA are being met.

(c) The corporation and the department may accept recipient certification that project requirements have been met as permitted by State laws or regulations. Acceptance of a certification that a project requirement was met shall not preclude the corporation and the department from carrying out selective sampling and verification of such certification.

(d) All contracts between the recipient and parties carrying out construction and other CWSRF assisted activities shall provide that representatives of the commissioner, the Comptroller, and the corporation shall have access to the work wherever it is in preparation or progress and shall permit extracts and copies of project records to be made by them.

(e) All change orders for which a disbursement is being requested shall be submitted to the corporation for review and approval for eligibility prior to disbursement being made. Proposed changes that will significantly alter the project or any treatment process incorporated therein shall require prior approval by the department or the corporation.

(f) The recipient shall be required to provide competent and adequate inspection of project construction, as may be required by the corporation in the PFA, under the direction of a professional engineer licensed in New York State who shall be responsible for determining whether such work has been performed in accordance with the approved plans and specifications. Following project completion, the professional engineer shall certify to the recipient, the commissioner, and the corporation that project construction was completed in accordance with the approved plans and specifications or approved amendments thereto.

(g) The recipient shall be required to have, or acquire, such title, estate or interest in the site of the project, including, without limitation, necessary easements and rights-of-way, to ensure the undisturbed use and possession during construction, and for the term of its CWSRF obligation under the PFA.

(h) The recipient, all authorized representatives of the recipient, and all contractors and subcontractors providing services for the project shall be required to comply with all Federal and State laws, regulations, and executive orders applicable to the project including, without limitation, affirmative action, equal employment opportunity, and small, minority and women's business enterprises.

(i) The department shall conduct an independent environmental review of all CWSRF projects. The recipient shall be required to provide the department with any documents needed by the department to complete its review.

(j) The recipient is solely responsible for the preparation of engineering reports, facilities plans, design drawings, plans and specifications, contract documents, and the inspection of the project necessary for the completion of the project. Notwithstanding any review or approval of engineering reports, facilities plans, design drawings, plans and specifications, contract documents, change orders, or the inspection of the project by the department, or the corporation, neither the department nor the corporation, nor their employees, agents or representatives, are responsible for increased costs resulting from defective engineering reports, facilities plans, design drawings, plans and specifications, change orders, or negligent inspection of the project.

(k) The recipient shall be required to take any corrective action necessary to bring a project into compliance with the project performance standards contained in the approved engineering report or facilities plan for the project or, if applicable, with the SPDES permit. The recipient may receive CWSRF assistance, to the extent such assistance is available, for corrective action, where such action is not required due to fraud, mismanagement or failure to comply with requirements set forth in a PFA.

(l) Certain treatment works projects designated by the commissioner shall be equivalency projects required to comply with the provisions of section 2602.10 of this Part. Projects to be designated will be those projects that can meet the additional requirements under section 2602.10 of this Part most readily.

(m) The corporation is authorized to provide CWSRF financing for land acquisition consistent with the provisions of sections 319 and 320 of the act. Land acquisition includes, but is not limited to the outright purchase of a fee simple interest in land, or the purchase of conservation easements.

21 CRR-NY 2602.9 Current through July 31, 2018

s 2602.10 - Equivalency project requirements

(a) Equivalency projects shall comply with section 2602.9 of this Part, as well as with all of the requirements of this section.

(b) Prior to making formal application for CWSRF assistance for construction of an equivalency project, a recipient must submit a facilities plan which:

(1) includes those elements required in an engineering report;

(2) demonstrates that those mandatory planning requirements of title II of the act for equivalency projects have been met; and

(3) incorporates any other requirements of the commissioner. The facilities plan shall replace the requirements of the engineering report.

(c) In preparing the facilities plan, the recipient shall comply with and incorporate all of the requirements of the act.

(d) In carrying out the project design, construction, and other project activities, the recipient shall comply with the requirements of the act as they are described in the approved facilities plan and shall also comply with applicable provisions of the act, including sections 204(d)(2) and 513.

(e) The recipient shall adopt a user charge system that apportions the operation, maintenance, and replacement costs of the project to the users according to the provisions of the act.

(f) Equivalency projects shall comply with those Federal requirements identified by the administrator as applicable to equivalency projects.

21 CRR-NY 2602.10 Current through July 31, 2018

s 2602.11 - Application and project financing agreements (PFA)

(a) Applications for CWSRF assistance shall be submitted in accordance with the provisions set forth in the IUP, in a format that is consistent with instructions published by the corporation including, at the corporation's discretion, the use of forms published by the corporation for use by parties seeking CWSRF assistance. An applicant may submit an application to the corporation for CWSRF assistance for projects for pre-design planning costs as set forth in the IUP. An applicant may submit an application to the corporation for CWSRF assistance for projects beyond the pre-design planning stage when project planning is completed and the applicant has submitted a facilities plan for an equivalency project or an engineering report, if required, for the project, and the corporation or the department is in the process of reviewing or has approved that report or plan.

(b) For projects beyond the pre-design planning stage, a PFA shall not be executed until a completed application for CWSRF assistance for that project has been submitted by the applicant to, and approved by, the corporation. A complete application shall include:

(1) formation and approval of any necessary special improvement districts;

(2) satisfaction of all environmental review requirements; and

(3) any other documentation relevant in evaluating an application for CWSRF assistance.

(c) A PFA for a portion of a project other than pre-design planning (a phase, a segment, or a design) shall include a schedule for the completion of the entire project and an agreement by the recipient to complete the entire project in accordance with such project completion schedule regardless of the availability of future CWSRF assistance.

(d) An applicant shall not receive CWSRF assistance if the corporation in its discretion, upon prior notice to the department, determines that such recipient cannot be reasonably expected to meet its managerial, technical or financial capability obligations under the applicable PFA.

21 CRR-NY 2602.11 Current through July 31, 2018

s 2602.12 - Disbursements

(a) Disbursement requests shall be submitted by the recipient to the corporation on forms provided by, or acceptable to, the corporation, in accordance with any instructions issued by, and together with any documentation of costs required by, the corporation. Copies of the disbursement request shall be submitted simultaneously to any other party named in the applicable PFA.

(b) The corporation may at any time review or audit disbursement requests and make adjustments for, among other things, arithmetical errors, items not built or bought, unallowable or unapproved costs, or any other reasons as set forth in the PFA, and may refuse to certify advances or payments to a recipient based thereon. The corporation may recover any such funds from the recipient that it determines after any review or audit should not have been released under the PFA or applicable law, including the ARRA.

(c) The corporation may transfer the full amount or any part of the CWSRF assistance to a project account established for that purpose.

(d) Satisfactory documentation supporting CWSRF disbursement requests shall demonstrate that the costs claimed were those approved in the PFA, that they are allowable costs and, where appropriate, that the goods or services for which the costs were incurred have been provided. Satisfactory documentation may include, but is not limited to, the following:

(1) signed copies of the payment vouchers or invoices, cancelled checks, details of current indirect cost and fringe benefit rates, copies of all sub agreements, executed construction contracts, change orders, payroll records, tabulations of allowable costs incurred to date;

(2) for construction, the latest cumulative work-in-place estimate and a summary of executed change orders for each construction contract;

(3) for professional services, a description of the nature of the service, and documentation that the service was provided according to the terms of a professional services agreement;

(4) for purchase of equipment not included in a construction contract, a detailed list of equipment purchased, price of each item, and the method and details of the procurement of each item and, where applicable, the origin of its manufacture;

(5) for project services approved in a PFA to be provided by employees of the recipient, employee time records, signed by the employee and the employee's supervisor, which account for all hours worked in the period covered, and describe in detail the work claimed as approvable; and

(6) for acquisition of land, copies of the executed contracts of sale and/or conservation easements, appraisals, title reports and, when appropriate, the closing statement and recorded deed or conservation easements.

All documentation for a project shall be incorporated and referenced in project accounts maintained by the recipient in accordance with generally accepted government accounting standards, or, in the case of non-governmental recipients, with the provisions of the applicable Federal regulations and PFA.

21 CRR-NY 2602.12 Current through July 31, 2018

s 2602.13 - Remedies

(a) If a recipient has received CWSRF assistance for work which is not an allowable cost of a project, the recipient may be required to reimburse the CWSRF for the amount of misapplied CWSRF assistance received (reimbursed amounts may be applied to allowable project costs or to bond redemption) and until the full amount of such misapplied CWSRF assistance has been reimbursed, the corporation may apply any interest rate subsidy to such reimbursement or recoup any other benefit provided to the recipient, or reduce any future interest rate subsidy or such other benefit, or reduce any future interest rate subsidy or such other benefit for future CWSRF assistance for purposes of reimbursing the CWSRF in addition to any other remedy permitted pursuant to this section, the PFA, or by law.

(b) If the department or the corporation determines that the project or the recipient is not in compliance with Federal or State laws or the terms of the applicable PFA, and following written notice to the recipient, the project or recipient is not brought into compliance, the corporation may:

(1) withdraw the interest rate subsidy, recoup any other benefit provided to the recipient, or reduce any future interest rate subsidy or such other benefit, or reduce any future interest rate subsidy or such other benefit for future CWSRF assistance;

(2) refuse to approve CWSRF disbursement requests; and

(3) refuse execution of subsequent PFAs until the project or recipient is brought into compliance.

(c) Nothing in this section shall be construed to limit the rights of the department or the corporation to take action including, but not limited to, administrative enforcement actions and actions for breach of contract against a recipient that fails to carry out its obligations under this Part, the PFA, or any other applicable State or Federal law, rule or regulation.

21 CRR-NY 2602.13 Current through July 31, 2018

s 2602.14 - Miscellaneous

(a) The corporation is authorized to take any corrective actions required by the administrator under the provisions of section 605 of the act if, in the judgment of the department or the corporation such corrective actions are required by applicable law.

21 CRR-NY 2602.14 Current through July 31, 2018



s 2602.15 - Program obligations

Notwithstanding any other provision of these regulations, any investment of moneys held in reserve funds established under the master trust agreement or any financing indenture (as defined in the master trust agreement) which secure bonds, notes or other obligations of the corporation or any temporary investment of moneys in the equity fund established under the master trust agreement in program obligations shall be governed solely by the applicable provisions of the master trust agreement or such financing indenture and the corporation's investment guidelines rather than by these regulations.

21 CRR-NY 2602.15 Current through July 31, 2018

s 2602.16 - Material incorporated by reference

(a) The following documents referenced in this Part are available for review and copying at the New York State Environmental Facilities Corporation, 625 Broadway, Albany, NY 12207-2997.

(1) Federal Water Pollution Control Act, also known as the Clean Water Act, 33 USC 1251 et seq., as amended from time to time, and as amended by the ARRA.

(2) Title 40 Code of Federal Regulations (CFR), part 35, section 2005.

(3) Chapter 75, title 31, United States Code (31 USC section 7501 et seq. enacted by Public Law 98-502, the Single Audit Act of 1984) as it may be amended.

(4) Title 40 of the CFR, part 35, subpart K (sections 35.3100 through 35.3170 and Appendix A) as amended and revised.

(5) Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Part 649.

(b) All United States publications referenced above are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

21 CRR-NY 2602.16 Current through July 31, 2018

s 2602.17 - Severability

If any provisions of this Part or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons and circumstances.

21 CRR-NY 2602.17 Current through July 31, 2018