

1 Department of Trade and Economic Development

2

3 Adopted Permanent Rules Relating to the Water Pollution Control

4 Revolving Fund

5

6 Rules as Adopted

7 7380.0400 PURPOSE.

8 The Water Pollution Control Revolving Fund administered by
9 the Minnesota Public Facilities Authority provides loans and
10 other forms of financial assistance for the planning, designing,
11 and construction of municipal wastewater treatment plants to
12 assure maintenance of progress toward municipal compliance, or
13 implementation of nonpoint source management controls, as
14 required by the Federal Water Pollution Control Act, to
15 municipalities for projects that have been certified by the
16 Minnesota Pollution Control Agency. The United States
17 Environmental Protection Agency provides a capitalization grant
18 to the state of Minnesota to provide loans through the authority
19 to ensure that the Revolving Fund is available to finance water
20 pollution control projects in perpetuity. The terms and
21 conditions of the loan agreement for financial assistance
22 provided by the authority must be in conformance with the
23 Federal Water Pollution Control Act, United States Code, title
24 33, particularly sections 1381 to 1387, the rules of the agency,
25 and this part.

26 7380.0410 DEFINITIONS.

27 Subpart 1. **Scope.** The terms defined in this part, in
28 Minnesota Statutes, section 446A.02, and in the Federal Water
29 Pollution Control Act, apply to parts 7380.0400 to 7380.0480.

30 Subp. 2. **Act.** "Act" means the Federal Water Pollution
31 Control Act, ~~as defined in Minnesota Statutes, section 446A.02,~~
32 ~~subdivision 4~~ United States Code, title 33, sections 1251 to
33 1387.

34 Subp. 3. **Agency.** "Agency" means the Minnesota Pollution
35 Control Agency.

1 Subp. 4. Applicant. "Applicant" means:

2 A. a governmental unit as defined in Minnesota
3 Statutes, section 446A.02, subdivision 5; or

4 B. a municipality as defined in this part.

5 Subp. 5. Average coupon rate. "Average coupon rate" means
6 the weighted average of bonds at the various maturity dates as
7 provided in the bond.

8 Subp. 6. Dedicated sources of revenue for repayment.

9 "Dedicated sources of revenue for repayment" means one or more
10 dedicated sources of revenue established by the municipality to
11 ensure repayment of the loan from the authority. Dedicated
12 sources of revenue may be: special assessments; general taxes
13 or general obligation bonds; sewer service charges; or other
14 sources acceptable to the authority.

15 Subp. 7. Allowable costs. Allowable costs that may be
16 financed by the authority, provided the allowable cost item is
17 reasonable ~~or~~, necessary, and permitted by the act, include
18 those provided in the list of costs given below. The listing is
19 only representative of allowable costs that may be financed by a
20 loan from the authority. Other allowable costs may also fall
21 within the language of the act, United States Code, title 33,
22 sections ~~1381-1387~~ 1381 to 1387.

23 A. acquisition costs of ~~land, building, or both~~
24 buildings or land under United States Code, title 33, sections
25 1381 to 1387;

26 B. site preparation;

27 C. construction costs;

28 D. engineering costs;

29 E. costs of equipment, machinery, or both;

30 F. bond issuance costs;

31 G. underwriting, financial advisors, or placement
32 fees;

33 H. trustee fees;

34 I. fees of guarantor, insurer, or financial
35 institution, other than the authority, which provide letters of
36 credit, surety bonds, or equivalent security;

1 J. authority fees, including application and guaranty
2 fees of the authority ~~and-administrative-costs-and-expenses;~~

3 K. certain contingency costs;

4 L. interest costs during construction;

5 M. legal fees, including those of the authority; and

6 N. a debt service reserve fund.

7 Subp. 8. **Executive director.** "Executive director" means
8 the executive director of the Public Facilities Authority.

9 Subp. 9. **Fund.** "Fund" means the Minnesota Water Pollution
10 Control Revolving Fund created by Minnesota Statutes, section
11 446A.07, as amended.

12 Subp. 10. **Intended use plan.** "Intended use plan" means
13 the document prepared annually by the agency according to
14 requirements of the act and submitted to the United States
15 Environmental Protection Agency ~~that-identifies.~~ The plan will
16 identify the intended uses of the amounts available to the fund,
17 including a list of wastewater treatment projects and other
18 eligible activities scheduled to be funded during the fiscal
19 year.

20 Subp. 11. **Loan agreement.** "Loan agreement" means the loan
21 agreement or financing agreement between the authority and the
22 municipality that provides all the terms and conditions of the
23 loan.

24 Subp. 12. **Municipal bond index.** "Municipal bond index"
25 means the index based on the yield that about 500 major issuers,
26 mainly of investment grade, would pay on new long-term (20 years)
27 general obligation, tax exempt bonds. The index is published
28 each Friday in the Wall Street Journal.

29 Subp. 13. **Municipality.** "Municipality" means any county,
30 city, and town, the Metropolitan Waste Control Commission
31 established in Minnesota Statutes, chapter 473 and the
32 Metropolitan Council when acting under the provisions of that
33 chapter or an Indian tribe or an authorized Indian tribal
34 organization, and any other governmental subdivision of the
35 state responsible by law for the prevention, control, and
36 abatement of water pollution in any area of the state.

1 Subp. 14. **Poverty level.** "Poverty level" means the level
 2 of income identified as the poverty level by the United States
 3 Census Bureau; or by another federal or state agency; or by an
 4 accredited independent survey, which most accurately measures
 5 the level of poverty within a project service area.

6 Subp. 15. **Project completion.** "Project completion" means
 7 the date on which the operation of the treatment works is
 8 initiated or is capable of being initiated.

9 Subp. 16. **Project service area.** "Project service area"
 10 means that part of the sewer service area directly served by the
 11 project being constructed.

12 Subp. 17. **Quarterly set rate.** "Quarterly set rate" means
 13 the maximum rate of interest set for a calendar quarter and
 14 shall be determined by the authority using as guidance the
 15 average of the municipal bond index for the four weeks prior to
 16 the beginning of the quarter minus 100 basis points for 20-year
 17 term loans. For loans of less than 20 years, the quarterly set
 18 rate will be determined by the authority using as guidance an
 19 index of investment grade bond issues having a maturity equal to
 20 the term of the loan being requested by the municipality minus a
 21 discount of five basis points for each year less than 20 years.

22 Subp. 18. **Sewer service area.** "Sewer service area" means
 23 the sewer service area that utilizes the individual sewage
 24 treatment plant.

25 Subp. 19. **Sewer service charge.** "Sewer service charge"
 26 means a charge levied upon the users of the sewer service system
 27 to pay for the use of the system. Service charges include tax
 28 assessment, special assessments, user fees charges, or other
 29 charges identified by any other name.

30 FINANCIAL ASSISTANCE APPLICATIONS

31 7380.0420 PROCEDURES FOR FINANCIAL ASSISTANCE APPLICATIONS
 32 PROCESSING.

33 Subpart 1. **In general.** To apply for financial assistance
 34 from the authority, eligible applicants identified in the annual
 35 intended use plan prepared by the agency may submit an

1 application at any time to the executive director of the
2 authority.

3 Prior to the submission of an application to the authority,
4 the municipality shall contact the authority to receive the
5 authority's advice under Minnesota Statutes, section 446A.051.

6 The authority shall forward the application to the agency
7 within ten day after receipt of the application by the
8 authority. The agency will accept and review the application as
9 provided in its rules.

10 Subp. 2. ~~Deadline-for-submission~~ Authority review. When
11 an application that has been certified by the commissioner of
12 the agency is returned to and received by the authority on or
13 before the first business day of the month, the authority shall
14 consider the application at the authority meeting that month.
15 If the certified application is received after the first
16 business day of the month and can be reviewed by the executive
17 director prior to the authority agenda deadline, the authority
18 may consider the application at the meeting in that month.

19 Subp. 3. **Completed application.** An application certified
20 by the commissioner of the agency is considered complete when
21 the executive director of the authority determines that the
22 exhibits and documentation which have been received provide a
23 full and accurate account of the project financing to the extent
24 that the authority is able to make an informed determination on
25 the application.

26 Subp. 4. **Incomplete application.** If an incomplete
27 application is received, the executive director shall notify the
28 applicant in writing of specific deficiencies in the
29 application. The applicant has 60 days from the date of mailing
30 of the executive director's notification to complete the
31 application. If the application is not completed and received
32 by the executive director within those 60 days, the application
33 is deemed to be rejected and the applicant, subject to agency
34 rules, must reapply to be further considered.

35 Subp. 5. **Applications not receiving certification.** An
36 application not receiving certification by the commissioner of

1 the agency will not receive consideration for financial
 2 assistance by the authority. The executive director of the
 3 authority shall notify the applicant of the rejection of the
 4 application by the authority within ten days of the rejection
 5 determination.

6 Subp. 6. **Rejection of loan applications by the authority.**

7 The authority may reject an application for financial assistance
 8 for the following reasons:

9 A. failure to obtain certification from the
 10 commissioner of the agency for the project;

11 B. failure to develop and document dedicated sources
 12 of revenue sufficient in the judgment of the authority to ensure
 13 repayment of the loan to the authority; and

14 C. failure to submit a completed application using
 15 the procedure provided in part 7380.0420, subpart 4, ~~and~~

16 ~~D. failure to demonstrate the legal, managerial,~~
 17 ~~institutional, and financial capacity to provide for adequate~~
 18 ~~operation, maintenance, and replacement cost of the municipal~~
 19 ~~facility for the term of the loan.~~

20 7380.0430 AUTHORITY EVALUATION PROCEDURE.

21 Subpart 1. **In general.** The authority shall evaluate
 22 applications certified by the commissioner of the agency to
 23 determine the applicant's capacity to comply with the terms and
 24 conditions of the Act and the rules of the authority as provided
 25 in this part.

26 The applicant's project must have been identified in the
 27 agency's intended use plan for the year in which the applicant
 28 is applying.

29 The authority will only provide financial aid for the
 30 allowable costs provided in part 7380.0410, subpart 7.

31 Subp. 2. **Loan terms and conditions.**

32 A. The terms and conditions for loans and other forms
 33 of financial assistance provided by the authority to eligible
 34 applicants for certified projects are as provided by the Act;
 35 Minnesota Statutes, chapter 446A; this part; and as provided by

1 the authority in the loan agreement for the project financing.

2 B. If the authority provides a loan to a municipality
3 for planning or design engineering of a wastewater treatment
4 facility, the interest rate, terms, and conditions must be the
5 same as for loans elsewhere in this part.

6 Subp. 3. **Repayment.** The repayment of loans to the
7 authority by the recipient must be sufficient to fully amortize
8 the loan for a period of not more than 20 years after project
9 completion. If treatment works have been segmented or phased,
10 the repayment requirements of this subpart and the payment
11 requirements of subpart 6 apply to each phase or segment of the
12 project.

13 ~~Subp. 4. Project completion. The repayment of loans to~~
14 ~~the authority by the recipients must begin no later than one~~
15 ~~year after project completion.~~

16 Subp. 5 4. **Dedicated sources of revenue.** Loan recipients
17 shall establish, and identify in the application, dedicated
18 sources of revenue sufficient to operate and maintain the new
19 facility, and fully amortize the loan for a term of not more
20 than 20 years. The authority shall examine the identified
21 dedicated sources of revenue to ensure that they are a
22 sufficient amount and of sufficient certainty to fully repay the
23 loan.

24 Subp. 6 5. **Payments.** The first principal and interest
25 payment is due and payable not later than one year after project
26 completion, or 24 months from the beginning of construction,
27 whichever is earlier. Subsequent principal and interest
28 payments by the loan recipient must be made at the times agreed
29 upon by the loan recipient and the authority in the loan
30 agreement. In general, semiannual loan payments will be
31 required, unless a different payment schedule is agreed upon and
32 provided in the loan agreement. However, in no case shall
33 payments be less frequent than annual principal and interest
34 payments sufficient to amortize the debt within the contracted
35 period.

1 7380.0440 INTEREST RATE DETERMINATIONS.

2 Subpart 1. In general. The interest rate charged by the
3 authority to a loan recipient must be determined as provided in
4 this part.

5 Subp. 2. Setting of interest rates.

6 A. The interest rate charged to a loan recipient must
7 be determined by the authority using as guidance the quarterly
8 set rate in effect at either the time of the municipality's
9 application to the authority, or at the time of the signing of
10 the loan agreement by the authority and the municipality, as
11 determined by the municipality at the signing of the loan
12 agreement.

13 B. The applicant is ~~is, however, eligible for~~ entitled
14 to the cumulative interest rate adjustments provided in this
15 part, or the applicant may request in its loan application a
16 specified basis point reduction from the average coupon rate of
17 bonds to be sold by the authority. If the loan applicant
18 applies for the specified basis point reduction, the following
19 requirements must be met: regardless of when the applicant
20 chooses to set the interest rate as provided in item A.

21 C. If the authority funds an applicant's project
22 through the sale of authority bonds, the applicant may request
23 in its loan application the specific basis point reduction from
24 the average coupon rate of the bonds sold by the authority as
25 provided in item D. If an applicant chooses this option, the
26 applicant will not be entitled to receive any other interest
27 rate adjustment as provided in item B or subparts 4 to 6. The
28 applicant also must comply with the following conditions:

29 A. (1) the payment schedule agreed to will follow
30 follows the payment schedule of the bonds sold by the authority;

31 B. (2) acceptable agreement on fund
32 accountability is reached;

33 C. (3) the municipality can demonstrate its
34 creditworthiness; and

35 D. (4) the integrity of the fund is maintained.

36 D. The authority shall annually provide in its

1 application material the specific basis point reduction it will
2 allow under ~~this option~~ item C.

3 Subp. 3. Suspension of loans at the quarterly set rate.

4 The authority may suspend offering loans at the quarterly set
5 rate if it determines that market conditions impacting the
6 municipal bond index are unsettled or impair the viability of
7 the fund. At the time of that determination, the authority may
8 by resolution adopt a revised quarterly set rate, based upon
9 generally accepted practices of interest rate forecasting, for a
10 period of time determined by the authority. The authority may,
11 based upon market conditions, extend the offering of loans at
12 the revised quarterly set rate and continue to do so until the
13 time the authority considers it prudent to again use the
14 municipal bond index as guidance for the quarterly set rate.

15 Subp. 4. Demographic considerations.

16 A. A loan application will be considered for an
17 interest rate reduction based upon the population of the project
18 service area, and be eligible for a reduction as follows:

19 (1) Applicants with a project service area
20 population of less than 150,000 and larger than 100,000 are
21 eligible to receive the quarterly set rate minus 25 basis
22 points, subject to the interest rate adjustments given in this
23 part.

24 (2) Applicants with a project service area
25 population of 100,000 or less and larger than 25,000 are
26 eligible to receive the quarterly set rate minus 50 basis
27 points, subject to the interest rate adjustments given in this
28 part.

29 (3) Applicants with a project service area
30 population of 25,000 or less and larger than 5,000 are eligible
31 to receive the quarterly set rate minus 75 basis points, subject
32 to the interest rate adjustments in this part.

33 (4) Applicants with a project service area
34 population of 5,000 or less and larger than 2,500 are eligible
35 to receive the quarterly set rate minus 100 basis points,
36 subject to the interest rate adjustments in this part.

1 (5) Applicants with a project service area
2 population of 2,500 or less but larger than 1,000 are eligible
3 to receive the quarterly set rate minus 125 basis points,
4 subject to the interest rate adjustments in this part.

5 (6) Applicants with a project service population
6 of 1,000 or less are eligible to receive the quarterly set rate
7 minus 150 basis points, subject to the interest rate adjustments
8 in this part.

9 B. The data used to determine the population and the
10 median household income of the project service area should be
11 that which most accurately measures the population and median
12 household income of the area. The authority shall determine if
13 the data submitted by the municipality is an appropriate and
14 accurate measurement of the population and household income of
15 the project service area.

16 C. The metropolitan and nonmetropolitan median
17 household income levels of the state must be determined from
18 income data from the most recent census of the United States or
19 from data from the state demographer. The data provided must be
20 applied as the criteria to determine if the applicants' project
21 service area household income is at, below, or above the median
22 household level for the metropolitan or nonmetropolitan area as
23 applicable.

24 D. If there is reason to believe that the United
25 States census data or the data from the state demographer is not
26 a currently accurate representation of the median household
27 income or population within the project service area, the
28 applicant may document the reasons why the data is not an
29 accurate representation, and obtain additional information
30 regarding median household income or population for the project
31 service area. The information must consist of reliable data
32 from local, regional, state or federal sources, or from a survey
33 conducted by a reliable impartial source.

34 Subp. 5. Interest rate adjustment. Any applicant is
35 eligible to receive consideration for interest rate adjustments
36 to the interest rate to be charged by the authority as provided

1 in this part.

2 A. The median household income is the income level
3 for the project service area of the facility being financed by
4 the authority. If the median household income level for the
5 area is below the median household income level for a
6 metropolitan or nonmetropolitan area, as applicable, the
7 applicant is eligible for a 50 basis point reduction in the
8 rate; or

9 B. If the percentage of poverty level households in
10 the project service area is at or above the national average,
11 the applicant is eligible for a 100 basis points reduction in
12 the interest rate charged by the authority.

13 C. If the current estimated annual sewer service
14 charge of the project service area~~7-coupled-with-the-financing7~~
15 ~~operation7-maintenance7-and-replacement-costs-of-the-new~~
16 ~~facility-results-in-an-annual-sewer-service-charge-in-excess~~
17 of after the completion of the project exceeds one percent of
18 the median household income level of the project service area,
19 the municipality is eligible for a 100 basis points point
20 reduction in the interest rate.

21 Subp. 6. ~~Interest-free loans.~~ The authority may offer
22 ~~interest-free loans as provided in this part to municipalities~~
23 ~~demonstrating in their application that they are financially~~
24 ~~unable to pay any interest charge on the loan. The authority~~
25 ~~shall not offer interest-free loans if the offering of an~~
26 ~~interest-free loan results in the combined rate of interest on~~
27 ~~the authority's portfolio to yield less than the rate of~~
28 ~~inflation as determined by the consumer price index.~~

29 Interest-free loans for any applicant are limited to
30 \$500,000, or the eligible cost of the project, whichever is
31 less. The authority shall not provide interest-free loans, in
32 total, exceeding up to ten percent of the total capitalization
33 grant funds scheduled to be received by the authority.

34 To be eligible for consideration for an interest-free loan,
35 an applicant must meet each of the following conditions:

36 A. the population of the project service area has

1 declined over the past ten years;

2 B. the percent of ~~people-in~~ poverty level households
3 in the project service area of the project is at or ~~exceeds-the~~
4 ~~poverty-level~~ above the national average; and

5 C. the ~~current~~ estimated annual sewer service charge
6 of the project service area ~~coupled-with-the-financing~~
7 ~~operation~~ ~~and-replacement-costs-of-the-new~~
8 ~~facility-results-in-an-annual-sewer-service-charge-in-excess~~
9 of after the completion of the project exceeds one and one-half
10 percent of the median household income level of the project
11 service area.

12 7380.0450 OTHER FINANCIAL ASSISTANCE.

13 In addition to the loans provided in parts 7380.0430 to
14 7380.0440, the authority may use any forms of financial aids
15 provided in United States Code, title 33, section 1383(d). The
16 use of specific financing tools will be determined by the
17 authority based on existing financial market conditions at the
18 time the financing of the project takes place.

19 The revolving loan fund authorized by the act may be used:

20 A. to buy or refinance the debt obligation of
21 municipalities for treatment works for which the debt was
22 incurred and construction begun after March 7, 1985, at or below
23 market rate;

24 B. to guarantee or purchase insurance for local
25 obligations to improve credit market access or reduce interest
26 rates;

27 C. to provide a source of revenue or security for the
28 payment of principal and interest on revenue or general
29 obligation bonds issued by the authority if bond proceeds are
30 deposited in the fund; and

31 D. to provide loan guarantees for similar revolving
32 funds established by a governmental unit other than state
33 agencies.

34 7380.0460 FEES.

35 If the authority charges a loan recipient a loan

1 origination fee, the fee must be based on a schedule established
2 by the authority and must not exceed one and one-half percent of
3 funds borrowed from the authority. The fees, if any, will be
4 charged to all loan recipients and must be as provided in the
5 loan application form. These fees may be included as an
6 eligible project activity or category in the municipality's
7 application to the authority, and are due and payable as
8 provided in the loan agreement.

9 7380.0470 RELEASE OF FUNDS.

10 Subpart 1. In general. Subject to the availability of
11 funds, payments to the governmental unit for an approved project
12 will be made in accordance with applicable state and federal law
13 governing payments, but payments will not be made until the
14 authority has determined the total estimated cost of the
15 project, and ascertained that the total final financing of the
16 project is assured by the following:

17 A. a loan authorized by state law or the
18 appropriation proceeds of bonds or other money of the
19 municipality to a fund for construction of a project; and

20 B. an irrevocable undertaking, by resolution of the
21 applicant, to use the loan proceeds exclusively for the project,
22 and to pay any additional amount by which the cost of the
23 project exceeds the final estimate by the appropriation to the
24 construction fund of additional money or proceeds of additional
25 bonds to be issued by the governmental unit.

26 Subp. 2. Adverse change. The authority shall not release
27 funds to a municipality for an approved project until the
28 authority has determined that there have been no adverse changes
29 in the financial capacity of the municipality since the day of
30 the completion of the application.

31 The authority reserves the right to suspend or terminate
32 funding to the municipality if the authority determines that
33 there has been an adverse change.

34 Subp. 3. Conformance with plans and reporting
35 requirements. The authority shall withhold, suspend, or

1 terminate either total or partial payments if the authority
2 determines that a project does not substantially conform to
3 approved plans and specifications, or there has been substantial
4 noncompliance with reporting requirements.

5 The executive director shall give a municipality written
6 notice of the deficiencies the authority has determined exist,
7 and the time in which the municipality must demonstrate to the
8 authority's satisfaction that the condition has or will be
9 corrected. The time for demonstration must not exceed 90 days.

10 7380.0480 REPORTS AND AUDITS.

11 Subpart 1. **Reports.** During the term of the loan, the
12 municipality shall make written reports to the executive
13 director on forms provided by the authority and on a schedule
14 determined by the executive director.

15 Subp. 2. **Audits.** Financial assistance recipients must
16 arrange and pay for independent audits, acceptable to the
17 authority and prepared in compliance with the Office of
18 Management and Budget, Circular A-128, published in the Federal
19 Register, volume 50, number 188, page 39083, on September 27,
20 1985, and in compliance with the Single Audit Act of 1984,
21 United States Code, title 31, sections 7501-7507. ~~Costs~~
22 ~~incurred-in-preparation-of-the-audit-are-an-eligible-activity-or~~
23 ~~category-under-part-7380-04107-subpart-7-~~