

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

**WAC 173-95A-015 Integrated funding approach.** (1) Where possible, the Washington state department of ecology combines the management of the centennial program with other funding programs, such as the water pollution control revolving fund, the stormwater financial assistance program, and the Clean Water Act section 319 nonpoint source program.

(2) The integrated funding process includes a combined funding cycle, program guidelines, funding offer and applicant list, and statewide funding workshops.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

**WAC 173-95A-020 Definitions.** For the purposes of this chapter:

(1) **Activities** see water pollution control activities.

(2) **Applicant** means a public body that has applied for funding.

(3) **Best management practices** (BMP) means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.

(4) **Cash match** means ((moneys)) funds used to match the state share of a grant.

(5) **Ceiling amount** means the highest level of financial assistance the department can provide to a recipient for an individual project.

(6) **Centennial** means the centennial clean water program.

(7) **Commercial, industrial, and institutional flows** mean the portion of the total flows to a facility that originate from large commercial establishments, industrial facilities, or institutional sources such as state schools, hospitals, and prisons.

(8) **Competitive funding** means ((moneys)) funds available for projects through a statewide evaluation process.

(9) **Completion date** or **expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.

(10) **Concentrated animal feeding operation** (CAFO) means:

(a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five-year, twenty-four-hour storm event; or

(b) An animal livestock feeding operation that is under a department administrative order, notice of violation, or a National Pollution Discharge Elimination System permit; or

(c) An animal livestock feeding operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or

(d) An animal livestock feeding operation designated by the Environmental Protection Agency as polluting the waters of Washington state.

(11) **Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.

(12) **Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.

(13) **Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

(14) **Cost-effective alternative** means the option selected in an approved (~~(facilities plan)~~) planning document that meets the requirements of the project, recognizes environmental and other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., (~~lowest present worth or equivalent annual value~~)) life cycle cost).

(15) **Department** means the Washington state department of ecology.

(16) **Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

(17) **Director** means the director of the Washington state department of ecology or his or her authorized designee.

(18) **Draft offer and applicant list** means a catalog of all applications for financial assistance considered and those proposed for funding, based on estimates of state and federal budgets.

(19) **Easement** means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to inspect, maintain, or repair loan-or-grant-funded activities or facilities; sewer use ordinances and other legal documents may be sufficient.

(20) **Effective date** means the date the loan or grant agreement is signed by the department's water quality program manager.

(21) **Eligible cost** means the portion of a facilities or activities project that can be funded based on program eligibility as defined in WAC 173-98-100 and in the most recently updated edition of the *Water Quality Financial Assistance Guidelines* (publication #10-10-049).

(22) **Enforcement order** means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

(23) (~~(**Engineering report** means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.~~

~~(24))~~) **Environmental degradation** means the reduced capacity of the environment to meet social and ecological objectives and needs.

~~((25))~~) (24) **Environmental emergency** means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

~~((26))~~) (25) **Equivalent residential unit (ERU)** means a unit of measurement used to express the average sewage loading discharged from a typical full-time single-family dwelling unit.

~~((27))~~) (26) **Estimated construction cost** means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

~~((28))~~) (27) **Existing need** means water pollution control facility's capacity reserved for all users, at the time of application.

((+29+)) **(28) Existing residential need** means that portion of a water pollution control facility's capacity reserved for residential structures that:

(a) Exists within the project service area at the time of application;

(b) Is connected to the facility or is scheduled to be connected to the facility in an approved (~~engineering report~~) planning document; and

(c) Will bear the financial burden of paying for the new facility.

((+30+)) **(29) Extended grant payments** means cash disbursements for eligible project costs made with equal annual payments as established in RCW 70.146.075.

((+31+)) **(30) Facilities** see water pollution control facility.

~~((+32+)) **(30) Facilities plan** means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC.~~

(+33+)) **(31) Final offer and applicant list** means a catalog of all applications for financial assistance considered and those offered funding, based on adopted state and federal budgets.

((+34+)) **(32) Force account** means loan or grant project work performed using labor, materials, or equipment of a public body.

((+35+)) **(33) Funding cycle** means the events related to the competitive process used to allocate (~~moneys~~) funds from the water pollution control revolving fund, centennial clean water program, the stormwater financial assistance program, and the Clean Water Act section 319 nonpoint source program for a state fiscal year.

((+36+)) **(34) Grant agreement** means a contractual arrangement between a public body and the department.

((+37+)) **(35) Growth** means the portion of the flows to a facility reserved for future residential, commercial, industrial, or institutional flows.

((+38+)) **(36) Indirect cost** means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

((+39+)) **(37) In-kind contributions** means the value of noncash contributions provided for a project.

((+40+)) **(38) Interlocal agreement** means a written arrangement between a grant recipient and another public body to provide eligible grant match contributions to a project. Interlocal agreements are subject to chapter 39.34 RCW, Interlocal Cooperation Act.

((+41+)) **(39) Interlocal costs** means the value of goods or services provided to a project by a public body under the terms of an interlocal agreement. Interlocal contributions satisfy cash matching requirements.

((+42+)) **(40) Infiltration and inflow** means water, other than wastewater, that enters a sewer system.

((+43+)) **(41) Infiltration and inflow correction** means the cost-effective alternative or alternatives identified in an approved (~~facilities plan or engineering report~~) planning document for eliminating or reducing the infiltration and inflow to an existing sewer system.

((+44+)) **(42) Landowner agreement** means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

((+45+)) (43) **Loan agreement** means a contractual arrangement between a public body and the department that involves a disbursement of ((moneys)) funds that must be repaid.

((+46+)) (44) **Loan default** means failure to make a loan repayment to the department within sixty days after the payment was due.

((+47+)) (45) **Match** means the recipient share of eligible project costs.

((+48+)) (46) **Nonpoint source water pollution** means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to, atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from boats or other marine vessels.

((+49+)) (47) **Plans and specifications** means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

((+50+)) (48) **Preliminary project priority list** means a catalog of all applications for financial assistance considered for funding and submitted to the Washington state legislature for its consideration during budget development.

((+51+)) (49) **Project** means a water quality improvement effort funded with a grant or loan.

((+52+)) (50) **Project completion** or **expiration** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

((+53+)) (51) **Public body** means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.

((+54+)) (52) **Public health emergency** means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

((+55+)) (53) **Recipient** means a public body that has an effective loan or grant agreement with the department.

((+56+)) (54) **Residential** means the portion of the total flows to a facility that originates from single family houses, apartments, mobile home parks, small commercial facilities, and community facilities such as local K-12 public schools, libraries, and fire stations.

((+57+)) (55) **Revolving fund** means Washington state's water pollution control revolving fund.

((+58+)) (56) **Riparian buffer** or **zone** means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

((+59+)) (57) **Scope of work** means a detailed description of project tasks, milestones, and measurable objectives.

((+60+)) (58) **Service area population** means the number of people served in the area of the project.

((+61+)) (59) **Severe public health hazard** means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

((+62+)) (60) Sewer means the pipe and related pump stations located on public property or on public rights of way and easements that convey wastewater from buildings.

((+63+)) (61) Side sewer means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

((+64+)) (62) State environmental review process (SERP) means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 C.F.R. § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

((+65+)) (63) Total eligible project cost means the sum of all expenses associated with a water quality project that are eligible for funding.

((+66+)) (64) Total project cost means the sum of all expenses associated with a water quality project.

((+67+)) (65) Water pollution means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders the waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

((+68+)) (66) Water pollution control activities or activities means actions taken by a public body for the following purposes:

- (a) To prevent or mitigate pollution of underground water;
- (b) To control nonpoint sources of water pollution;
- (c) To restore the water quality of freshwater lakes; and

(d) To maintain or improve water quality through the use of water pollution control facilities or other means.

((+69+)) (67) Water pollution control facility or facilities means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater((7)) including, but not limited to, sanitary sewage, stormwater, residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

((+70+)) (68) Water resource inventory area (WRIA) means one of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

**WAC 173-95A-100 Grant and loan eligible.** Certain projects or project elements, including but not limited to the following may be eligible for centennial loan or grant assistance:

(1) **Aquatic plant control** when the water quality degradation is due to the presence of aquatic plants, and the source(s) of pollution can be addressed sufficiently to ensure that the pollution is eliminated;

(2) **BMP implementation** on private property:

(a) Best management practices that consist of new, innovative or alternative technology not yet demonstrated in the department's region in which it is proposed;

(b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a conservation easement or landowner agreement is granted by the landowner; and

(c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner;

(3) **BMP implementation** on public property;

(4) **Computer equipment and software** specific to the funded project and preapproved by the department;

(5) **Diagnostic studies** to assess current water quality;

(6) **Education and outreach** efforts for the public;

(7) **Environmental checklists**, assessments, and impact statements necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;

(8) **Equipment and tools** as identified in a grant or loan agreement;

(9) **Groundwater protection activities** such as wellhead protection and critical aquifer recharge area protection;

(10) **Hardship assistance** for wastewater (~~treatment~~) facilities construction, on-site sewage system repair and replacement, and construction elements of (~~a design-build-operate~~) an alternative public works contracting project;

(11) **Implementation** of eligible projects identified in water quality plans;

(12) **Indirect costs** as defined in the most recently updated edition of *Administrative Requirements for Ecology Grants and Loans* (publication #91-18);

(13) **Lake implementation and planning activities** on lakes with public access;

(14) **Land acquisition:**

(a) For wetland habitat preservation and protection;

(b) For riparian area and watershed preservation and protection;

or

(c) For drinking water source protection;

(15) **Landscaping for erosion control** directly related to a project, or site-specific landscaping to mitigate site conditions and comply with requirements in the State Environmental Policy Act or the National Environmental Policy Act;

~~((15))~~ (16) **Light refreshments** for meetings when specified in the loan or grant agreement;

~~((16))~~ (17) **Monitoring BMP effectiveness;**

~~((17))~~ (18) **Monitoring equipment** used for water quality assessment;

~~((18))~~ (19) **Monitoring water quality;**

~~((19))~~ (20) **On-site sewage systems:**

(a) **Development and administration of a local loan fund for on-site sewage system repair and replacement** for residential and small commercial systems; and

(b) **On-site sewage system surveys;**

~~((20))~~ (21) **Model ordinances** development and dissemination of model ordinances to prevent or reduce pollution from nonpoint sources;

- ((+21)) (22) Planning, including comprehensive basin plans, watershed plans, and area-wide water quality plans;
- ((+22)) (23) Planning and design for hardship wastewater facilities;
- (24) Riparian and wetlands habitat restoration and enhancement, including revegetation;
- ((+23)) (25) Sales tax;
- ((+24)) (26) Stream restoration that meets recognized water quality standards;
- ((+25)) (27) Stormwater activities that are certain nonpermit-related planning activities, such as education and outreach, establishing a stormwater utility, identifying and mapping of pollution sources, and department-approved erosion control;
- ((+26)) (28) Total maximum daily load study development and implementation;
- ((+27)) (29) Training to develop specific skills that are necessary to directly satisfy the scope of work. Training, conference registration, or annual meeting fees must be preapproved by the department;
- ((+28)) (30) Wastewater or stormwater utility development;
- ((+29)) (31) Wastewater or stormwater utility rate or development impact fee studies;
- ((+30)) (32) Water quality education and stewardship programs;
- and
- ((+31)) (33) Wellhead protection.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

**WAC 173-95A-110 Loan only eligible.** Certain projects or project elements((,)) including, but not limited to, the following may be eligible for centennial loan assistance:

- (1) **CAFOs**, for BMP implementation;
- (2) Environmental emergencies as defined in WAC 173-95A-020 and applied for in accordance with the provisions described in the published funding guidelines for the funding cycle in which the emergency occurs;
- (3) **Facilities** for nonhardship wastewater and stormwater:
  - (a) **Planning**:
    - (i) **Comprehensive sewer planning**, including wastewater elements of capital facilities planning under the Growth Management Act;
    - (ii) ~~((Facilities))~~ **Planning** for water pollution control facilities; and
    - (iii) **Stormwater** planning for permitted facilities;
  - (b) **Design** preparation of plans and specifications for water pollution control facilities;
  - (c) **Construction** of:
    - (i) Combined sewer overflow abatement;
    - (ii) ~~((Side sewers or individual pump stations or other appurtenances on private residential property;~~
    - ~~((iii) Sewers and side sewers on public property for infiltration and inflow correction projects, and to replace existing water pollution control facilities;~~

(iv)) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of stormwater; and  
 ((v)) (iii) Water pollution control facility construction to meet existing residential needs;  
 (d) **Value engineering** for water pollution control facilities;  
 ((e) ~~Design or construction~~ costs associated with design-build or design-build-operate contracts;  
 (3)) (4) **Land acquisition**:  
 (a) As an integral part of the treatment process (e.g., land application); or  
 (b) ((For prevention of water pollution;  
 (e)) For siting of water pollution control facilities, sewer rights of way, easements, and associated costs; ((or  
 (d) for wetland habitat preservation;  
 (4)) (5) **Legal expenses** will be determined on a case-by-case basis, such as development of local ordinances, use of a bond counsel, review of technical documents;  
 ((5)) (6) **On-site sewage systems**:  
 (a) **Local loan fund** program development and administration;  
 (b) **New sewer systems** to eliminate failing or failed on-site sewage systems;  
 ((6)) (7) **Spare parts**, an initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements; and  
 ((7)) (8) **Transferring ownership** of a small wastewater system to a public body.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

**WAC 173-95A-120 Projects ineligible for centennial program funding.** While it is impossible to list every project or project element that is not eligible, some examples of ineligible projects include:  
 (1) **Abandonment** or demolition of existing structures;  
 (2) ((~~Acts of nature~~ that alter the natural environment, thereby causing water quality problems;  
 (3)) **Commercial, institutional or industrial** wastewater pre-treatment;  
 ((4)) (3) **Compensation** or damages for any claim or injury of any kind arising out of the project, including any personal injury, damage to any kind of real or personal property, or any kind of contractual damages, whether direct, indirect, or consequential;  
 ((5)) (4) **Cost-plus-a-percentage-of-cost contracts** (also known as multiplier contracts), time and materials contracts, and percent-of-construction contracts in facilities projects a negotiated fee in general contractor/construction manager contracts is not a cost-plus-a-percentage-of-cost contract);  
 ((6)) (5) **Facilities** intended solely to control, transport, treat, dispose, or otherwise manage commercial, institutional, or industrial wastewater;  
 ((7)) (6) **Fines and penalties** due to violations of or failure to comply with federal, state, or local laws;  
 ((8)) (7) **Flood control**, projects or project elements intended solely for flood control;



- ((+9)) (8) Funding application preparation for loans or grants;
- ((+10)) (9) Interest on bonds, interim financing, and associated costs to finance projects;
- ((+11)) (10) Landscaping for aesthetic reasons;
- ((+12)) (11) Legal expenses associated with claims and litigation;
- ((+13)) (12) Lobbying or expenses associated with lobbying;
- ((+14)) (13) Monitoring equipment for sampling and analysis of commercial, institutional, or industrial discharges;
- ((+15)) (14) Office furniture not included in the recipient's indirect rate;
- ((+16)) (15) Operating expenses of local government, such as the salaries and expenses of a mayor, city councilmember, and city attorney;
- ((+17)) (16) Operation and maintenance costs for work not performed by contract and that is performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semiannually, but not less frequently than once per year), to service, check, or replace items that are not broken; or work not performed by contract that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary;
- ((+18)) (17) Overtime differential paid to employees of a public body to complete administrative or force account work;
- ((+19)) (18) Permit fees not directly required for the completion of the project;
- ((+20)) (19) Professional dues;
- ((+21)) (20) Reclamation of abandoned mines;
- ((+22)) (21) Refinance of existing debt;
- ((+23)) (22) Rework costs or previously funded objectives;
- ((+24)) (23) Solid or hazardous waste;
- ((+25)) (24) Utility local improvement district formation;
- ((+26)) (25) Vehicle purchase, except for vehicles intended for the transportation of liquid or dewatered sludge or septage; and
- ((+27)) (26) Water quantity or other water resource projects that solely address water quantity issues such as reservoirs and dams.

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

**WAC 173-95A-200 Centennial clean water program loan interest rates.** ((The department bases loan recipient interest rates on the average market interest rate. The average market interest rate is based on the daily market rate published in the bond buyer's index for tax exempt municipal bonds for the period from sixty to thirty days before the annual funding application cycle begins. See WAC 173-95A-400 for hardship interest rates.

Loan terms and interest rates are as follows:

Repayment Period	Interest Rate
Up to five years:	Thirty percent of the average market rate.
More than five but no more than twenty years:	Sixty percent of the average market rate.))

Loan interest rates are determined by the provisions in WAC 173-98-400.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

**WAC 173-95A-300 Application for funding.** (1) To apply for funding the applicant must submit a completed application to the department. The department will provide the application on the department web site.

~~(2) ((The applicant may be asked to provide the following project information:~~

~~(a) Basic information such as names of contacts, addresses, and other tracking information;~~

~~(b) Project summary;~~

~~(c) Project goals, objectives, and milestones;~~

~~(d) Overall water quality benefits;~~

~~(e) Public health benefits;~~

~~(f) Sources of pollution addressed;~~

~~(g) How the project will address state and federal mandates, elements in Washington's Water Quality Plan to Control Nonpoint Sources of Pollution, or other such plans;~~

~~(h) Performance measures and postproject assessment monitoring;~~

~~(i) Readiness to proceed, likelihood of success, and measures of success specific to the project;~~

~~(j) Local initiatives, commitments, or priorities related to the project; or~~

~~(k) Other information requested by the department.~~

~~(3)) Minimum score on application.~~

(a) An applicant must receive a minimum score equal to fifty percent of the available points on ~~((section three,))~~ the water quality and public health improvements form, of the water quality financial assistance application to be rated for the *Draft Offer and Applicant List* and *Final Offer and Applicant List*. ~~((An applicant with fewer than fifty percent of the points available on section three of the application is not eligible for funding consideration.))~~ The department may offer funding to applicants with fewer than fifty percent of the points available on ~~((section three))~~ the form if demand for funding is low.

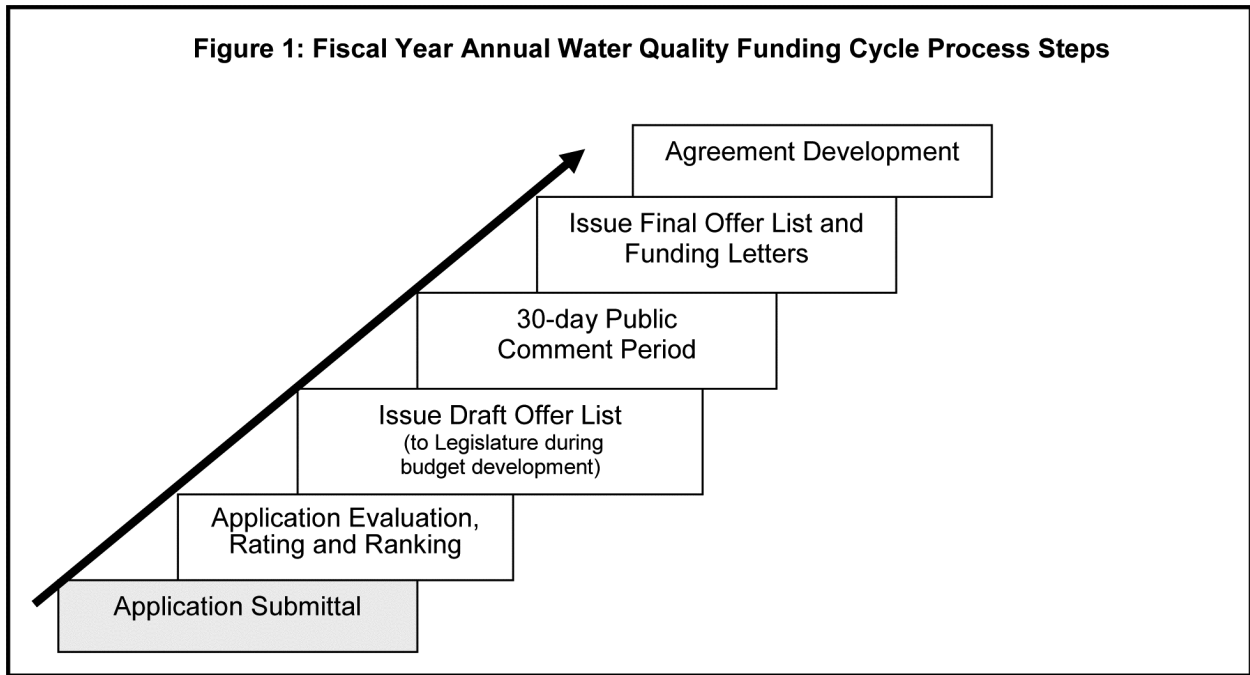
(b) An applicant must receive a minimum score equal to sixty percent of the available points on the water quality financial assistance application to be eligible for funding consideration. The department may offer funding to applicants with fewer than sixty percent of the points available on the financial assistance application if demand for funding is low.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

**WAC 173-95A-310 ((Ecology's)) The department's responsibilities.**

(1) A general funding cycle schedule is provided in Figure 1.

**Figure 1: Fiscal Year Annual Water Quality Funding Cycle Process Steps**



(2) In general, ~~((ecology))~~ the department will provide the following services, although annual modifications may be made to accommodate legislative schedules and requirements:

(a) Make available the application and applicable guidelines before the associated funding cycle begins;

(b) Conduct at least one application workshop in each of ecology's four regions;

(c) Conduct preapplication workshops to discuss regional level priorities if applicable;

(d) After the application deadline, complete an initial review of project proposals for funding eligibility;

(e) Request other agencies to provide evaluation assistance as needed;

(f) Rate and rank the applications using a consistent scoring system;

~~((g)) ((Prepare a combined preliminary project priority list, after evaluation and scoring of all applications;~~

~~((h)) Submit preliminary project priority list to the state legislature during budget development;~~

~~((i))~~ Develop a combined *Draft Offer and Applicant List*;

~~((j))~~ (h) Facilitate a public review and comment period for the combined *Draft Offer and Applicant List*;

~~((k))~~ (i) Sponsor at least one public meeting to explain the combined *Draft Offer and Applicant List*;

~~((l))~~ (j) Develop a combined *Final Offer and Applicant List*. Public comments collected during ~~((draft))~~ the public review period will be incorporated ~~((and result in a responsiveness summary));~~

~~((m))~~ (k) Issue funding decision letters to all applicants; and

~~((n))~~ (l) Negotiate, develop, and finalize loan or grant agreements.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

**WAC 173-95A-320 Final offer and applicant list.** Loan and grant offers identified on the *Final Offer and Applicant List* will be effective for up to one year from the publication date of the *Final Offer and Applicant List*. Loan and grant offers that do not result in a signed agreement (~~((are automatically))~~) may be ended.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

**WAC 173-95A-400 Wastewater ((treatment)) facilities construction.** (~~((1) There are three primary factors considered in determining hardship funding for the construction portion of a wastewater treatment facilities projects:~~

- ~~(a) Service area population;~~
- ~~(b) Existing residential need at the time of application; and~~
- ~~(c) Level of financial burden placed on the ratepayers.~~

~~(2) **Service area population.** Applicants serving an area of twenty five thousand or less can request hardship funding consideration by submitting a financial hardship analysis form, provided by the department, along with the grant and loan funding application. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.~~

~~(3) **Existing residential need.** Water pollution control facilities construction costs that are associated with existing residential need at the time of application may be eligible for funding. Additional reserve capacity for growth is not eligible for grant funding.~~

~~(4) **Level of financial burden.**~~

~~(a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percent of the median household income (MHI) for the project area. The annual residential sewer user fee is calculated using:~~

- ~~(i) Estimated construction costs;~~
- ~~(ii) Existing annual operation and maintenance costs;~~
- ~~(iii) Discounted, existing annual operation and maintenance costs as a result of constructing the project;~~
- ~~(iv) Projected future operation and maintenance costs for the total facility;~~
- ~~(v) The applicant's current and future annual debt service on the project;~~
- ~~(vi) The annual debt service for the project if funded with a water pollution control revolving fund loan;~~
- ~~(vii) Other grants and loans funding the project;~~
- ~~(viii) The applicant's level of debt for other wastewater facilities not associated with the project;~~
- ~~(ix) The total number of households or equivalent residential units (ERUs) existing at the time of application that will be served by the project;~~
- ~~(x) The nonresidential share of the total annual costs; and~~
- ~~(xi) The MHI for the project area;~~

~~(b) The sewer user fee as a percentage of the MHI is the basis for the department's grant and loan hardship funding continuum (shown below in figure 2 and figure 3);~~

~~(c) The most recent available American community survey data determines the MHI; and~~

~~(d) If MHI data are not available for a community, the county MHI in which the community resides will be used;~~

~~(e) If the applicant disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the MHI for the project area.~~

~~(5) **Hardship grant ceiling amounts.** The department uses the grant hardship funding continuum, shown in figure 2 below, to determine the percent of grant awarded. There is a funding ceiling of five million dollars per project.~~

~~For example:~~

~~When a grant applicant with a service area population of twenty five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may receive a grant of seventy five percent of eligible project costs, not to exceed five million dollars (see figure 2 below).~~

~~(6) If a project in the hardship category receives partial funding due to department funding constraints, the department may offer the remaining funding, up to five million dollars, in the next funding cycle, and on a case by case basis. The department may require further hardship analysis before offering the remaining moneys.~~

~~(7) **Loan terms and interest rates.** The department uses the loan hardship funding continuum, shown in figure 2 below, to determine the hardship loan interest rates. There is a funding ceiling of five million dollars. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years.~~

~~For example:~~

~~Assuming that the average market rate for tax exempt municipal bonds is five percent, the following would apply.~~

~~When a loan applicant with a service area population of twenty five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may be eligible for a twenty year repayment term and a one percent interest rate. This interest rate represents twenty percent of the average market rate for tax exempt municipal bonds (see figure 3 below).~~

~~(8) **Design-build-operate (construction portion).**~~

~~(a) Design build or design build operate projects must be consistent with applicable statutes, such as chapter 39.10 RCW, Alternative public works contracting procedures, chapter 70.150 RCW, Water Quality Joint Development Act, and/or chapter 35.58 RCW, Metropolitan municipal corporations;~~

~~(b) The construction portion of a design build operate project under chapter 70.150 RCW, Water Quality Joint Development Act, may be eligible for a grant if the public body can demonstrate financial hardship in accordance with WAC 173 95A 400. Hardship grant ceiling amounts found in WAC 173 95A 520 apply;~~

~~(c) Design build operate projects must comply with chapter 35.58 RCW, Metropolitan municipal corporations;~~

- (d) ~~The project scope of work must implement a department approved facilities plan;~~
- (e) ~~In addition to the project application information found in WAC 173-95A-300, the project will be evaluated on the applicant's level of administrative and technical expertise;~~
- (f) ~~At the time of application, the following must be provided:~~
  - (i) ~~A legal opinion from an attorney of the public body indicating that the public body has sufficient legal authority to use the process;~~
  - (ii) ~~A department approved facilities plan;~~
  - (iii) ~~A report detailing the projected savings based on a cost and time to complete as compared to the traditional design bid construct process;~~
- (g) ~~The department may require that the public body obtain delegation authority consistent with chapter 90.48 RCW, Water pollution control, and assume the responsibility for sequential review and approval of plans, specifications, and change orders. The department will continue to make all eligibility determinations;~~
- (h) ~~Costs associated with change orders are not eligible for reimbursement;~~
- (i) ~~Projects must be completed according to the timeline in WAC 173-95A-700 and 173-95A-710; and~~
- (j) ~~Before the loan agreement is signed, the following must be approved by the department:~~
  - (i) ~~Primary design elements;~~
  - (ii) ~~Final service agreements.~~
- (9) **Extended grant payments.** ~~In some cases, the legislature may appropriate extended grant payments per RCW 70.146.075.~~
- (10) **Figure 2: Grant Hardship-Funding Continuum**

<b>Sewer User Fee divided by MHI</b>	<b>Below two percent</b>	<b>Two percent and above, but below three percent</b>	<b>Three percent and above, but below five percent</b>	<b>Five percent and above</b>
<b>Hardship Designation</b>	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI))
<b>Grant Hardship-Funding Continuum</b>	<b>Zero percent Grant</b>	<b>Fifty percent Grant</b> (up to five million dollars)	<b>Seventy-five percent Grant</b> (up to five million dollars)	<b>One hundred percent Grant</b> (up to five million dollars)

(11) **Figure 3: Loan Hardship-Funding Continuum**

<b>Sewer User Fee divided by MHI</b>	<b>Below two percent</b>	<b>Two percent and above, but below three percent</b>	<b>Three percent and above, but below five percent</b>	<b>Five percent and above</b>
<b>Hardship Designation</b>	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI))
<b>Loan Hardship-Funding Continuum</b>	Loan at sixty percent of market rate	Loan at forty percent of market rate	Loan at twenty percent of market rate	Loan at zero percent interest))

Financial hardship for wastewater facilities construction is determined by the provisions in WAC 173-98-300.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

**WAC 173-95A-500 Funding allocation.** There are two project categories in which the competitive funding is allocated: Activities and facilities.

(1) The scores derived from the application rating and ranking process will determine the allocation of the competitive funding;

(2) No more than two-thirds of the fund can go to either category;

(3) If the demand for funding is low in either category, then ~~((moneys))~~ funds may be shifted amongst categories; and

(4) The department will adjust the funding allocation based on the following:

(a) To provide match for other funding sources, such as the Clean Water Act section 319 nonpoint source program or other funding programs; or

(b) To comply with funding restrictions in legislative appropriations.

For example:

If fifty percent of the competitive centennial program funding is comprised of state building construction account ~~((moneys))~~ funds, then fifty percent of the centennial program funding must be allocated to projects approved for that funding source.

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

**WAC 173-95A-510 Funding recognition.** (1) The recipient must acknowledge department funding in reports, technical documents, publications, brochures, and other materials.

(2) Site-specific projects must ~~((display a sign acknowledging department funding. The sign must be large enough to be seen from nearby roadways, and include a department logo))~~ acknowledge department funding by one of the following means:

(a) Standard signage (appropriately sized and weather resistant);

(b) Posters and wall signage in a public building or location;

(c) Newspaper or periodical advertisement for project construction, groundbreaking ceremony, or operation of the new or improved facility;

(d) Online signage placed on community web site or social media outlet; or

(e) Press release.

**WAC 173-95A-520 Ceiling amounts. (1) Activities projects.**

Grants for activities projects made under the centennial program are subject to ceiling amounts of:

(a) Five hundred thousand dollars if the match for the grant is in the form of cash and/or interlocal costs; or

(b) Two hundred fifty thousand dollars if any part of the match is in the form of in-kind goods and services; and

(c) Five hundred thousand dollars for activities project loans.

(2) **Facilities projects.** Loans are subject to ceiling amounts of five million dollars.

(3) **Hardship projects.**

(a) Grants for facilities construction projects are subject to ceiling amounts of five million dollars. If a centennial program grant is provided for a hardship project in conjunction with a water pollution control revolving fund (revolving fund) forgivable principal loan award for hardship, then the ceiling amount for the combined revolving fund forgivable principal loan and centennial program grant is five million dollars; and

(b) Grants for facilities planning and design may not exceed fifty percent of the total eligible costs.

(4) **Water pollution control facilities construction bid overruns.**

(a) If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's ~~((original))~~ cost estimate as supplied with the bid documents;

(b) The ceiling amounts in the year the project was offered funding and as established in WAC 173-95A-520 apply; and

(c) First priority for availability of ~~((moneys))~~ funds will be given to hardship communities based on the severity of financial need. For more information, see WAC 173-95A-400.

(5) **Water pollution control facilities construction change orders:**

(a) The department may approve funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s);

(b) The department may approve funding for change orders for greater than five percent of the eligible portion of the low responsive responsible construction bid(s) only if the recipient can demonstrate that the additional funding is needed to remedy unforeseeable, extraordinary site-specific conditions;

(c) The ceiling amounts in the year the project was offered funding and as established in WAC 173-95A-520 apply; and

~~((e))~~ (d) First priority for availability of ~~((moneys))~~ funds will be given to hardship communities based on the severity of financial need. For more information on hardship, see WAC 173-95A-400.



AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

**WAC 173-95A-530 Match.** (1) Depending on the grant amount, match can consist of cash or interlocal and in-kind contributions that total twenty-five percent of the total eligible project cost.

(2) No match is required for loans under the centennial program.

(3) No match is required for grants for wastewater facility hard-ship projects.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

**WAC 173-95A-540 Step process for facilities.** (~~((1) The step process is required for facilities construction projects. The process begins with site specific planning, and continues through design to construction or implementation. At the time of application, all previous steps must be approved by the department. Draft documents must be sent to the department's engineers at least sixty days before end of application cycle for approval by end of application cycle. Funding for one step does not guarantee the future funding of subsequent steps.~~

~~(2) The step process includes the following:~~

~~(a) **Planning (step one):** Step one involves the preparation of a site-specific facilities plan that identifies the cost effective alternatives for addressing a water pollution control problem. There is no prerequisite for planning. If there is an existing engineering report, it must be upgraded to a facilities plan;~~

~~(b) **Design (step two):** Step two includes the preparation of plans and specifications for use in construction. These must be based on the preferred cost effective alternative identified in the facilities plan. Facilities plans must be approved by the department before an application for design can be considered for funding. Facilities plans approved by the department more than two years before the close of the application period must contain evidence of recent review by the department to ensure the document reflects current conditions; and~~

~~(c) **Construction (step three):** Step three includes the actual building of facilities based on the approved design. Design must be approved by the department before an application for construction can be considered for funding. The applicant must also have a current rate study that includes the proposed project before an application for construction can be considered for funding. The utility rate proposed in the rate study must be adequate to pay for O&M, debt service, and replacement of short lived assets, and any other associated project costs. The applicant must have an adopted fee ordinance based on the current rate study that includes the proposed project before the department will sign a loan agreement.~~

~~(3) **Combined steps for smaller design-bid-construct projects (step four):** In some cases, design and construction may be combined into one loan. Step four applicants must demonstrate that step two (design) can be completed and approved by the department within one year of the effective date of the funding agreement. The applicant must also complete a rate study that includes the proposed project and~~

~~adopt a fee ordinance based on the rate study before the department will approve plans and specifications as required in WAC 173-98-560, approval of plans and specifications. The utility rate proposed in the rate study must be adequate to pay for O&M, debt service, and replacement of short lived assets, and any other associated project costs. The total project costs for step four projects must be five million dollars or less.~~

~~(4) **Step deviations.** During the application phase of the funding cycle, the department may allow an applicant to deviate from the traditional step requirements if:~~

~~(a) The Washington state department of health has declared a public health emergency; and~~

~~(b) The proposed project would remedy this situation.~~

~~No loan agreement will be signed until all previous steps have been completed and approved by the department.) Wastewater facility projects must follow the step process provisions in WAC 173-98-530.~~

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

**WAC 173-95A-550 Commercial, industrial, and institutional flows.**

(1) The portion of a project designed to serve the needs of commercial, industrial, and institutional customers may be funded using loans only.

(2) Capacity to serve local public primary and secondary schools may be grant eligible if the applicant can demonstrate financial hardship according to WAC ((173-95A-400)) 173-98-300.

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

**WAC 173-95A-560 ((Step)) Process for water pollution control activities.** The ((step)) following process is required for lake projects and recommended for all water pollution control activities projects.

(1) **Planning** involves the identification of problems ((and)), evaluation of cost-effective alternatives in accordance with WAC 173-98-730, and preparation of a planning document.

(2) **Implementation** is the actual implementation of the project based on the planning document. ((Where the project includes construction, a design element may be included before the implementation step.))

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

**WAC 173-95A-600 General requirements.** (1) Recipients must fully comply with all applicable federal, state, and local laws and rules

relating to topics such as procurement, discrimination, labor, job safety, drug-free environments, and minority and women owned businesses.

(2) Ongoing management of most aspects of loan projects is subject to the most recent edition of Administrative Requirements for Recipients of Ecology Grants and Loans (publication #91-18) or Administrative Requirements for Recipients of Ecology Grants and Loans Managed in EAGL (publication #14-01-002).

(3) Ongoing management of all aspects of loan projects is subject to the associated funding program guidelines.

(4) The applicant shall secure all necessary permits required by authorities having jurisdiction over the project. Copies must be available to the department upon request.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

**WAC 173-95A-610 The Growth Management Act.** (1) (~~(A local government not in compliance with the Growth Management Act may not receive loans or grants from the department, except, in limited circumstances, where a local government must address a public health need or substantial environmental degradation.)~~) A county, city, or town that has been offered a loan or grant for a water pollution control facilities project may not receive loan or grant funding while the county, city, or town is not in compliance with the Growth Management Act unless:

(a) Documentation showing that a public health need has been provided by the Washington state department of health; or documentation showing that a substantial environmental degradation exists has been provided by the department; and

(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address the public health need or substantial environmental degradation; and

(c) The department has determined that the project is designed to address only the public health need or substantial environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.

(2) For the purposes of this section, "compliance with the Growth Management Act" means that ~~(+)~~ a county, city, or town that must or chooses to plan under RCW 36.70A.040 and has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by chapter 36.70A RCW.

(3) For the purposes of this chapter, a public health need related to a loan or grant must be documented by a letter signed by the secretary of the Washington state department of health or his or her designee and addressed to the public official who signed the loan or grant application. "Public health need" means a situation where:

(a) There is a documented potential for:

(i) Contaminating a source of drinking water; or

(ii) Failure of existing wastewater system or systems resulting in contamination being present on the surface of the ground in the quantities and locations as to create a potential for public contact; or

(iii) Contamination of a commercial or recreational shellfish bed as to create a critical public health risk associated with consumption of the shellfish; or

(iv) Contamination of surface water so as to create a critical public health risk associated with recreational use; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(4) For the purposes of this chapter, a substantial environmental degradation related to a loan or grant must be documented by a letter signed by the director and addressed to the public official who signed the loan or grant application. "Substantial environmental degradation" means that:

(a) There is a situation causing real, documented, critical environmental contamination that:

(i) Contributes to violations of the state's water quality standards; or

(ii) Interferes with beneficial uses of the waters of the state; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

~~((5) A county, city, or town that has been offered a loan or grant for a water pollution control facilities project may not receive loan or grant funding while the county, city, or town is not in compliance with the Growth Management Act unless:~~

~~(a) Documentation showing that a public health need has been provided by the Washington state department of health; or documentation showing that a substantial environmental degradation exists has been provided by the department; and~~

~~(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address the public health need or substantial environmental degradation; and~~

~~(c) The department has determined that the project is designed to address only the public health need or substantial environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.))~~

**PART 7**  
**TIMELY USE OF CENTENNIAL PROGRAM ((MONEYS)) FUNDS**

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

**WAC 173-95A-700 Starting a project.** (~~Costs incurred before a grant or loan agreement is effective are not eligible for reimbursement, unless prior authorization is granted by the department.~~

~~(1) **Prior authorization to incur costs.**~~

~~(a) An applicant may request prior authorization to incur eligible project costs if the following applies:~~

~~(i) The project is identified on the *Final Offer and Applicant List*;~~

~~(ii) Costs are incurred between the publication date of the *Final Offer and Applicant List* and when the funding agreement is signed by the water quality program manager or other schedules set in the prior authorization letter; and~~

~~(iii) The written request is made to the water quality program manager;~~

~~(b) The water quality program manager will send the applicant a letter approving or denying the prior authorization; and~~

~~(c) Any project costs incurred before the publication date of the *Final Offer and Applicant List* are not eligible for reimbursement. All costs incurred before the agreement is signed by the water quality program manager are at the applicant's own risk.~~

~~(2)) (1) **Project initiation.** Grant or loan ((moneys)) funds must be spent in a timely fashion. The recipient must consistently meet the performance measures agreed to in the grant or loan agreement. These performance measures include, but are not limited to, the following:~~

~~(a) Work on a project must be started within ((sixteen)) ten months of the publication date of the *Final Offer and Applicant List* on which the project was proposed.~~

~~(b) Starting a project means making any measurable steps toward achieving the milestones, objectives, and overall goals of the project.~~

~~((c) Loan and grant offers identified on the *Final Offer and Applicant List* will be effective for up to one year from the publication date of the *Final Offer and Applicant List*. Loan and grant offers that do not result in a signed agreement are automatically ended, see WAC 173-95A-320.~~

~~(3)) (2) **Project initiation extension.** Certain circumstances may allow a time extension of no more than twelve months for starting a project. For example:~~

~~(a) Schedules included in water quality permits, consent decrees, or enforcement orders; or~~

~~(b) There is a need to do work during an environmental window in a specific season of the year.~~

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

**WAC 173-95A-800 Accounting requirements for grant and loan recipients.** (1) Recipients must maintain ((accounting records in accordance with RCW 43.09.200, Local government accounting Uniform sys-

~~tem of accounting. For example, charges must be properly supported, related to eligible costs, and documented by appropriate records. These records must be maintained separately))~~ accurate records and accounts for the project in accordance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB), including standards related to the reporting of infrastructure assets, or in accordance with the state standards in RCW 43.09.200 Local government accounting—Uniform system of accounting.

(2) Accounting irregularities may result in an immediate payment hold. The director may require immediate repayment of misused loan or grant (~~moneys~~) funds.

AMENDATORY SECTION (Amending WSR 11-20-036, filed 9/27/11, effective 10/28/11)

**WAC 173-95A-810 Appealing a department decision.** If a dispute arises concerning eligibility decisions made by the department within the context of a loan agreement, the decision may be appealed. A lawsuit cannot be brought to superior court unless the aggrieved party follows these procedures, which are intended to encourage the informal resolution of disputes consistent with RCW 34.05.060.

(1) First, the recipient may seek review of the financial assistance program's initial decision within thirty days of the decision by a written appeal to the water quality program manager. The program manager will consider the appeal information and may choose to discuss the matter by telephone or in person;

(2) The program manager will issue a written decision within thirty days from the time the appeal is received;

(3) If the recipient is not satisfied with the program manager's decision, the recipient may request review of the decision within thirty days to the deputy director;

(4) The deputy director will consider the appeal information, and may (~~chese~~) choose to discuss the matter by telephone or in person. The deputy director will issue a written decision within thirty days from the time the appeal is received, and that decision will be the final decision of the department;

(5) If the recipient is not satisfied with the deputy director's final decision, the recipient may appeal to the Thurston County superior court, pursuant to RCW 34.05.570(4), which pertains to the review of "other agency action"; and

(6) Unless all parties to the appeal agree that a different time frame is appropriate, the parties shall attempt to bring the matter for a superior court determination within four months of the date in which the administrative record is filed with the court. This time frame is to ensure minimal disruptions to the program.

AMENDATORY SECTION (Amending WSR 07-14-096, filed 6/29/07, effective 7/30/07)

**WAC 173-95A-820 Audit requirements for grant and loan recipients.** The department, or at the department's discretion another authorized auditor, (~~will~~) may audit the grant or loan agreement and records.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-95A-580 Approval of plans and specifications.