

CHAPTER 74:05:13

AMERICAN RECOVERY AND REINVESTMENT ACT PROGRAM

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74:05:13:01. Definitions. Terms defined in the American Recovery and Reinvestment Act of 2009 (ARRA), the Clean Water Act (CWA), or the Safe Drinking Water Act (SDWA), as applicable, have the same meaning when used in this chapter. In addition the following terms used in this chapter mean:

(1) “Act,” the “American Recovery and Reinvestment Act of 2009, Public Law 111-5, effective February 17, 2009;” the “Clean Water Act,” the federal Water Pollution Control Act Amendments of 1987, as amended to January 1, 2009, otherwise known as the Clean Water Act; or the “Safe Drinking Water Act,” the federal Safe Drinking Water Act, 42 U.S.C. § 300f to 42 U.S.C. § 300j-26, inclusive, including the Safe Drinking Water Act Amendments of 1996, as amended to January 1, 2009, collectively otherwise known as the Safe Drinking Water Act, as applicable;

(2) “Applicant,” the sponsoring entity applying for funding to construct a project eligible under the relevant Act;

(3) “Assistance,” financial assistance awarded by the Board of Water and Natural Resources pursuant to SDCL 46A-1-60.1 to 46A-1-60.3, inclusive;

(4) “Board,” the Board of Water and Natural Resources acting as that board or as the South Dakota Conservancy District;

(5) “Capitalization grant,” a grant supplied by EPA to the state and to be used for purposes outlined in the relevant Act;

(6) “Construction,” any of the following procedures: preliminary planning to determine project feasibility; engineering, environmental, architectural, legal, fiscal, or economic studies, surveys, designs, plans, working drawings, specifications, or procedures; rehabilitation or development of new water sources; other necessary actions for the erection, building acquisition, alteration, remodeling, improvement, or extension of eligible works, the purchase of equipment, the acquisition of land integral to a project; and the inspection or supervision of any of these procedures;

(7) “CWSRF,” the State Water Pollution Control Revolving Fund, a dedicated financing mechanism to provide loans, grants, and other forms of financial assistance for eligible works and projects;

(8) “Department,” the South Dakota Department of Environment and Natural Resources;

(9) “DWSRF,” the Drinking Water State Revolving Fund, a dedicated financing mechanism to provide financial assistance to drinking water works;

(10) “EPA,” the United States Environmental Protection Agency;

(11) “Facilities plan,” an engineering evaluation that describes the need for the proposed water or wastewater treatment works based on present conditions and future needs, evaluates the costs and adequacies of appropriate alternatives, identifies potential environmental impacts of the proposed project; and provides the selection and justification of a final treatment alternative;

(12) “Intended Use Plan,” “IUP,” a document prepared annually which provides assurances and specific proposals, including a list of potential SRF projects;

(13) “Loan,” lending of funds by the board to an eligible applicant pursuant to a financing agreement through the purchase or acquisition of any evidence of indebtedness or other obligation which is issued by the applicant and which is payable from taxes, non-ad valorem sales taxes, or from rates, revenues, charges, or assessments, or from distributions of revenue pursuant to a state appropriation or statutory or constitutional provision, or payable from a pledge of property or other sources;

(14) “Minimum established rates,” rates charged to residential users of a water or wastewater system that meet the following criteria:

(a) For municipalities and sanitary districts:

(i); The monthly residential wastewater bill is \$17 or more for 5,000 gallons usage; or

(ii) The monthly residential water bill is \$20 or more for 5,000 gallons usage; or

(b) For all other assistance recipients:

(i); The monthly residential wastewater bill is \$35 or more for 7,000 gallons usage; or

(ii) The monthly water bill for rural households is \$50 or more for 7,000 gallons usage;

(15) “Principal forgiveness,” a reduction in the outstanding principal balance of a loan to be applied at the time of amortization of the loan;

(16) “Project,” the actual erection, building acquisition, alteration, remodeling, improvement, or extension of eligible works, including the necessary planning, design, land acquisition, and purchase or installation of equipment;

(17) "Recipient," an applicant receiving funds;

(18) "Secretary," the secretary of the Department of Environment and Natural Resources or a designated representative of the secretary.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:02. ARRA funding. Except as otherwise provided in this chapter, an applicant and project are eligible for loan funding under the American Recovery and Reinvestment Act of 2009 if

(1) the applicant and project are eligible for CWSRF assistance pursuant to chapter 74:05:08; or

(2) the applicant and project are eligible for DWSRF assistance pursuant to chapter 74:05:11.

Except as otherwise provided in this chapter, assistance is governed by chapter 74:05:08 for CWSRF program loans and by chapter 74:05:11 for DWSRF program loans.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:03. Eligibility. ARRA funding may not be approved for nonpoint source incentive rate loans under the CWSRF program or for interim financing under the CWSRF or DWSRF program.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:04. Project priority determined by points. In addition to the points awarded pursuant to §74:05:08:03.01 for CWSRF program projects and pursuant to §74:05:11:06 for DWSRF program projects, the board will award supplemental points to projects placed on the priority list prior to September 1, 2009 on the following basis:

(1) Complete project plans and specifications have been submitted to the department for review - 25 points for CWSRF program projects or 100 points for DWSRF program projects;

(2) Project plans and specifications have received department approval - 15 points for CWSRF program projects or 60 points for DWSRF program projects;

(3) An environmental review for project has been completed (applies only to projects that have not received points for 74:05:13:04 (1) or 74:05:13:04 (2)) - 10 points for CWSRF program projects or 40 points for DWSRF program projects; or

(4) Projects that qualify as green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities under the Act - 40 points for CWSRF program projects or 160 points for DWSRF program projects;

The priority list shall be part of the intended use plan.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:05. Amendment of IUP and priority list. The board may add a project to the relevant priority list at any board meeting if the action is included on the agenda posted for the meeting. The department shall assign points to projects added to the relevant priority list according to § 74:05:08:03.01, § 74:05:11:06, and § 74:05:13:04, as applicable.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:06. Priority list bypass procedures. The project priority procedures in §74:05:08:04.01 apply to CWSRF program projects and the procedures in §74:05:11:07 apply to DWSRF program projects.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:07. Deadline for application. Applications must be postmarked or delivered prior to June 16, 2009. The department shall present applications to the board after the completion of all required technical reviews and financial analyses. The department shall notify the applicant of the board meeting at which the application will be considered by the board. After June 15, 2009, the deadlines for applications specified in §74:05:08:07 and §74:05:11:09 shall apply.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:08. Applications. Any applicant for an ARRA loan shall submit an application to the board on forms obtained from the department. An applicant may apply

for any amount of financial assistance. A loan application may not be considered by the board until the secretary has determined that the application is complete. A complete loan application must include those forms listed in subsection (1) and (8) of §74:05:08:13 for CWSRF program projects and subsection (1) and (8) of §74:05:11:12 for DWSRF projects. The Board may also consider applications for assistance submitted under the consolidated water facilities construction fund program under chapter 74:05:07 for ARRA funding if otherwise eligible.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:09. Financial assistance approval criteria. In determining any financial assistance for each applicant, the board may consider the criteria set forth in §74:05:08:12 for CWSRF program projects, and in §74:05:11:11 for DWSRF program projects. The Board may award less than the amount requested in the application. If the applicant has submitted applications for assistance from more than one program, the board may consider the combined applications and may approve financial assistance under any of the programs or under a combination of more than one program, including the consolidated water facilities construction fund program under chapter 74:05:07. If financial assistance is approved from more than one program, the amount of assistance approved may not exceed the aggregate amount of funding requested in the combined applications.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:10. Application completeness determination. The secretary shall review an application for completeness in accordance with the guidelines in §74:05:08:13 or §74:05:11:12, as applicable. The secretary shall notify the applicant within 15 days after receiving the application that the application is complete or incomplete. If the application is incomplete, the secretary shall identify in the notice those items required to complete the application. Except as addressed in §74:05:13:11, the applicant has 20 days to resubmit an application or provide additional information intended to complete an application. The secretary shall notify the applicant whether or not the resubmission or additional information is satisfactory to complete the application.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:11. Facilities plan submittal. Any applicant requesting SRF financial assistance must prepare a facilities plan. The facilities plan submitted with the application shall at minimum provide the information contained in §74:05:08:01(8) for CWSRF program projects or in §74:05:11:01(15) for DWSRF program projects. The

applicant shall be notified of any deficiencies in the completeness determination as described in §74:05:13:10. The information required by §74:05:08:13.02 for CWSRF program projects and by §74:05:11:12.02 for DWSRF program projects may be submitted to the board up to 20 days prior to the meeting at which the application will be considered by the board.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:12. Eligible use of funds. Financial assistance may be awarded for projects included in the intended use plan for one or more of the uses listed in §74:05:08:14(1) for eligible CWSRF program projects or in §74:05:11:13(1) for eligible DWSRF program projects.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:13. Financial security. Specific requirements to secure a loan must be included in the assistance agreement. A loan under the CWSRF program must be secured by one or more of the forms of security set forth in §74:05:08:15(1) through (4) inclusive, and a loan under the DWSRF program must be secured by one or more of the forms of security set forth in §74:05:11:15(1) through (4) inclusive.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:14. Applicant's ability to provide financial security. When determining an applicant's ability to provide security, the amount of principal forgiveness will not be considered as debt.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:15. Duration of assistance. The board shall set the disbursement requirements and the repayment period for each loan in the assistance agreement as permitted by the relevant Act. The repayment period may not exceed the useful life of the project.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:16. Assistance agreement interest rates. The interest rate for the loan shall be included in the assistance agreement. The interest rate on the loan will be 0 percent if the board determines to award a 100 percent principal forgiveness loan.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:17. Waiver of financial status summary. If the board determines to award a 100 percent principal forgiveness loan, the preparation of a summary of the applicant's financial status required for CWSRF program projects in §74:05:08:19 and for DWSRF program projects in §74:05:08:19 may be waived.

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Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:18. Assistance agreements. If an application is approved for funding, the board shall execute an assistance agreement with the sponsoring entity. The board shall establish the terms and conditions included in the assistance agreement. Assistance agreements may include, but are not limited to, the requirements of §74:05:08:20 for CWSRF program loans and of §74:05:11:20 for DWSRF program loans, provided that:

- (1) security for an ARRA loan shall be as required in §74:05:13:13; and
- (2) the conditions and amount of any principal forgiveness will be determined in accordance with §74:05:13:19 through §74:05:13:21, inclusive.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:19. Principal forgiveness as part of assistance agreements. Any assistance agreements awarded after October 1, 2008 may receive 10 percent of the assistance amount awarded as principal forgiveness. Assistance recipients that meet the minimum established rates set forth in §74:05:13:01(14) may receive principal forgiveness in an amount exceeding 10 percent of the assistance amount awarded.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:20. Principal forgiveness amount determination. In exercising its discretion in determining the amount of principal forgiveness, and considering the requirements of §74:05:13:19, the board may consider the following decision-making factors which are set forth in alphabetical order:

- (1) Annual utility operating budgets;
- (2) Available local cash and in-kind contributions;
- (3) Available program funds;
- (4) Compliance with permits and regulations;
- (5) Debt service capability;
- (6) Economic impact;
- (7) Other funding sources;
- (8) Readiness to proceed;
- (9) Regionalization or consolidation of facilities;
- (10) Technical feasibility;
- (11) Utility rates; and
- (12) Water quality benefits.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:21. Forfeiture of principal forgiveness. Assistance recipients shall forfeit their principal forgiveness if any of the following deadlines are not met:

(1) Complete plans and specifications must be postmarked or received by the department on or before October 1, 2009. In the event that plans and specifications for only a portion of the project identified in the loan application are received by the department on or before October 1, 2009, only the portion of the project identified in the plans and specifications shall be eligible for principal forgiveness. The principal forgiveness portion of the assistance will be adjusted based on the amount of the contract or contracts awarded in proportion to total construction cost identified in the loan application;

(2) The project must be advertised for bids and the bids received and opened in accordance with SDCL chapter 5-18 on or before December 10, 2009;

(3) The apparent lowest responsible bidder's proposal must be received by the department for review on or before December 21, 2009; and

(4) Construction contracts must be executed on or before February 1, 2010.

Upon forfeiture of principal forgiveness, the department will review the assistance recipient's ability to repay the assistance amount in its entirety at the rates and terms identified in the agreement. If the department determines that the security pledged at the time of application is insufficient, the assistance recipient will have the option to provide additional security or surrender all or a portion of assistance amount.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:22. Reallocation of principal forgiveness assistance. Assistance in the amount equal to the amount of any funds forfeited may be reallocated to other projects. The board will reallocate principal forgiveness assistance based on § 74:05:13:19 and §74:05:13:20.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.

74:05:13:23. Principal forgiveness termination. The board may choose to discontinue offering principal forgiveness for CWSRF program projects once \$9,619,550 of principal forgiveness has been provided to CWSRF program projects. The board may choose to discontinue offering principal forgiveness for DWSRF program projects once \$9,750,000 of principal forgiveness has been provided to DWSRF program projects.

Source:

General Authority: SDCL 46A-1-60.3.

Law Implemented: SDCL 46A-1-60.1 to 46A-1-60.3.