

**DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION**



**18 AAC 76**

**Alaska Clean Water and Drinking  
Water Revolving Loan Funds**

**As amended through September 10, 2017**

**TABLE OF CONTENTS**

ARTICLE 1. ALASKA CLEAN WATER FUND .....	1
18 AAC 76.005. PURPOSE.....	1
18 AAC 76.010. ELIGIBILITY.....	1
18 AAC 76.020. PRIORITY LIST PROCESS .....	3
18 AAC 76.030. APPLICATION PROCESS.....	4
18 AAC 76.035. LOAN SUBSIDY .....	7
18 AAC 76.040. ENVIRONMENTAL REVIEW .....	7
18 AAC 76.050. ABILITY TO REPAY.....	9
18 AAC 76.060. FINANCIAL ASSISTANCE CONDITIONS .....	10
18 AAC 76.070. POST-CONSTRUCTION ACTIVITIES .....	11
18 AAC 76.080. REPAYMENT; FINANCE CHARGES.....	12
18 AAC 76.085. FEE RATE AND PAYMENT.....	13
18 AAC 76.086. ELIGIBILITY OF EXPENDITURES.....	13
18 AAC 76.090. DISBURSEMENT .....	14
18 AAC 76.100. RECONSIDERATION OF FINANCIAL ASSISTANCE REQUEST	14
ARTICLE 2. ALASKA DRINKING WATER FUND.....	15
18 AAC 76.200. PURPOSE.....	15
18 AAC 76.205. TYPES OF FINANCIAL ASSISTANCE .....	15
18 AAC 76.210. ELIGIBLE MUNICIPAL DRINKING WATER SYSTEMS .....	16
18 AAC 76.215. ELIGIBLE PROJECTS AND ACTIVITIES; ALLOWABLE COSTS	17
18 AAC 76.220. PRIORITY LIST PROCESS .....	19
18 AAC 76.225. FINANCIAL ASSISTANCE APPLICATION PROCESS .....	20
18 AAC 76.230. ASSISTANCE FOR DISADVANTAGED COMMUNITIES.....	22
18 AAC 76.235. ENVIRONMENTAL REVIEW .....	22
18 AAC 76.240. ABILITY TO REPAY.....	24
18 AAC 76.245. FINANCIAL ASSISTANCE CONDITIONS .....	25
18 AAC 76.250. POST-CONSTRUCTION ACTIVITIES .....	27
18 AAC 76.252. LOAN CLASSIFICATIONS .....	27
18 AAC 76.255. REPAYMENT; FINANCE CHARGES.....	29
18 AAC 76.257. FEE RATE AND PAYMENT.....	30
18 AAC 76.258. ELIGIBILITY OF EXPENDITURES.....	31
18 AAC 76.260. DISBURSEMENT OF FINANCIAL ASSISTANCE.....	31
18 AAC 76.265. RECONSIDERATION OF FINANCIAL ASSISTANCE REQUEST	32
ARTICLE 3. GENERAL PROVISIONS.....	33
18 AAC 76.990. DEFINITIONS .....	33

**Chapter 76. Alaska Clean Water and Drinking Water Revolving Loan Funds.****Article**

1. Alaska Clean Water Fund (18 AAC 76.005 - 18 AAC 76.100)
2. Alaska Drinking Water Fund (18 AAC 76.200 - 18 AAC 76.270)
3. General Provisions (18 AAC 76.990)

**Article 1. Alaska Clean Water Fund.****Section**

05. Purpose
10. Eligibility
20. Priority list process
30. Application process
40. Environmental review
50. Ability to repay
60. Financial assistance conditions
70. Post-construction activities
80. Repayment; interest
90. Disbursement
100. Reconsideration of financial assistance request

**18 AAC 76.005. Purpose.** The regulations in 18 AAC 76.005 - 18 AAC 76.100 apply to financial assistance from the Alaska clean water fund, a federally-sponsored fund authorized by 33 U.S.C. 1381 - 33 U.S.C. 1387 (Title VI, Clean Water Act) and created by AS 46.03.032(a). Financial assistance from the Alaska clean water fund is available for the categories of projects listed in AS 46.03.032(d)(1). (Eff. 11/19/88, Register 108; am 8/2/97, Register 143)

**Authority:** AS 46.03.020 AS 46.03.032

**18 AAC 76.010. Eligibility.** (a) A municipality or other qualified entity under AS 46.03.032 may apply to the department for financial assistance from the Alaska clean water fund for a project described in AS 46.03.032.

(b) Repealed 8/2/97.

(c) Project costs eligible for refinancing from the Alaska clean water fund are

(1) eligible costs listed in (d) of this section, incurred after March 7, 1985, for a project that began construction after March 7, 1985 and that was not partially financed with a construction grant from the U.S. Environmental Protection Agency (EPA); and

(2) any portion of a project that was determined to be ineligible for grant funding under 33 U.S.C. 1281 - 33 U.S.C. 1299 (Title II, Clean Water Act).

(d) A municipality or other qualified entity may spend money received from the Alaska clean water fund for

- (1) investigations or studies necessary to complete a facility plan, or plans and specifications, required by 18 AAC 76.005 - 18 AAC 76.100;
- (2) surveys, designs, plans, working drawings, and specifications;
- (3) demolition costs, and costs to construct, alter, remodel, improve, or extend a facility;
- (4) machinery, furnishings, and equipment;
- (5) laboratory testing related to construction and design;
- (6) costs to administer, inspect, and supervise the project;
- (7) the eligible portion of change orders approved by the department;
- (8) the purchase of vehicles used for operation of the facility, as approved by the department;
- (9) insurance required by the financial assistance agreement;
- (10) computer systems dedicated to facility use;
- (11) reasonable landscaping costs;
- (12) leasing or purchase of land or surface and subsurface easements for project-related purposes, including for
  - (A) storing equipment and materials during construction;
  - (B) locating eligible treatment, distribution, or collection projects; and
  - (C) effluent application or recharge basins; and
- (13) other eligible projects or components of a project as provided under 33 U.S.C. 1383 if the project applicant is determined by the department to be eligible for funding under 33 U.S.C. 1383.

(e) Force account labor and equipment charge rates may be paid from financial assistance received from the Alaska clean water fund if they are included in the financial assistance agreement and if they are approved by the department. A change in force account charge rates must be submitted to the department for approval. To be approved, labor rates must be provided to the department in a form that documents basic pay, benefits, leave, and holiday rates.

(f) The department will, in its discretion, apply a portion of a capitalization grant received under 33 U.S.C. 1381 - 33 U.S.C. 1387 (Title VI, Clean Water Act) to cover the reasonable costs of administering the Alaska clean water fund and to provide technical assistance

to an eligible municipality or other qualified entity. (Eff. 11/19/88, Register 108; am 8/2/97, Register 143; am 9/10/2017, Register 223)

**Authority:** AS 46.03.020 AS 46.03.032

**18 AAC 76.020. Priority list process.** (a) As part of its intended use plan required under 33 U.S.C. 1386(c), the department will establish a proposed project priority list. To receive financial assistance from the Alaska clean water fund, a project must be included on the Alaska clean water fund priority list developed by the department. Projects will be funded in accordance with the priority list, if money is available.

(b) An applicant seeking financial assistance from the Alaska clean water fund must first submit a request for priority list ranking on a form provided by the department.

(c) The department will review requests for priority list ranking using criteria set out in (d) of this section and will, at least annually, revise the priority list. The proposed list will be made available for a 30-day public comment period. After the public comment period, the department may, based on public comments, revise the proposed list. An applicant's ranking on the anticipated fundable portion of a priority list is valid until the list is revised. An applicant must resubmit a request for priority list ranking each time the department proposes a revision to the priority list. If an applicant fails to resubmit a request after the department proposes a revision to the priority list, the applicant's ranking is subject to change or deletion.

(d) The department will review projects and rank them in priority funding order using the following criteria:

- (1) the applicant's readiness to initiate the project;
- (2) the type of project proposed;
- (3) current use of the receiving water that the project will benefit;
- (4) size of the population that will benefit from the project;
- (5) public health and environmental hazards to be addressed by the project; and
- (6) effect of the proposed project on water quality.

(e) As required under 33 U.S.C. 1386(c), the department will include in the intended use plan described in (a) of this section procedures and criteria for allocation of available money. (Eff. 11/19/88, Register 108; am 8/2/97, Register 143; am 12/29/2000, Register 156; am 9/27/09, Register 191)

**Authority:** AS 46.03.020 AS 46.03.032

**18 AAC 76.030. Application process.** (a) The department will review and approve an application for financial assistance from the Alaska clean water fund according to criteria set out

in 18 AAC 76.005 - 18 AAC 76.100. To apply for financial assistance, an applicant must submit

- (1) a completed application on forms provided by the department;
- (2) a resolution adopted by the applicant's governing body that authorizes the application and acceptance of the assistance;
- (3) certification from the applicant's attorney that the applicant has the legal authority to incur the debt that will be created by the financial assistance sought;
- (4) unless the department does not consider a project facility plan necessary in order to evaluate the project adequately, a project facility plan for a wastewater treatment facility, prepared and signed by a registered engineer, that demonstrates that

(A) for a project subject to 33 U.S.C. 1383(c)(1),

(i) the project will apply best practicable waste treatment technology as defined in 40 C.F.R. 35.2005(b)(7), as amended through June 25, 1997;

(ii) more than one technology was considered in selecting the project design concept;

(iii) opportunities to construct revenue-producing facilities and to make more efficient uses of energy and resources were considered;

(iv) any related wastewater collection system is not subject to excessive infiltration or inflow;

(v) innovative and alternative treatment technologies were evaluated;

(vi) potential recreational and open space opportunities were analyzed;

(vii) the selected treatment option is the most cost-effective, feasible alternative studied; and

(viii) the proposed project will not have a significant negative environmental impact, as determined by the department, using criteria and standards set out in 18 AAC 76.040; or

(B) for a project that is not subject to 33 U.S.C. 1383(c)(1),

(i) the selected treatment option is the most cost-effective, feasible alternative studied; and

(ii) the proposed project will not have a significant negative environmental impact, using criteria and standards set out in 18 AAC 76.040;

(5) before proceeding with final design or construction, certification in a form provided by the department that the applicant

(A) has studied and evaluated the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity for which assistance is sought under this chapter; and

(B) has selected, to the maximum extent practicable, a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account

(i) the cost of constructing the project or activity;

(ii) the cost of operating and maintaining the project or activity over the life of the project or activity; and

(iii) the cost of replacing the project or activity; or

(C) may alternatively seek to satisfy the information required by the department in accordance with (4) of this subsection, if the department determines it is appropriate;

(6) documentation of the availability of, and the commitment to use, one or more dedicated sources of revenue for repayment of the financial assistance;

(7) certification that a separate account within the applicant's accounting system has been established through which financial assistance received from the Alaska clean water fund will be administered;

(8) a value-engineering study if total building costs will exceed \$10,000,000, unless the department waives this requirement;

(9) a financial capability assessment for the proposed project, on a form provided by the department, that demonstrates the applicant's ability to repay the financial assistance as required in 18 AAC 76.050 and to operate and maintain the facility;

(10) plans and specifications for the project, prepared and signed by a registered engineer, with a summary of design criteria;

(11) for a publicly owned treatment works proposed for repair, replacement, or expansion and that is eligible for assistance under 33 U.S.C. 1383(c)(1), a fiscal sustainability plan; the applicant must submit the plan not later than the time of submission of the final disbursement request; the plan

(A) must include

(i) an inventory of critical assets that are part of the treatment works;

(ii) an evaluation of the condition and performance of inventoried assets or asset groupings;

(iii) a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of this plan; and

(iv) a plan for maintaining, repairing, and, as necessary, replacing the treatment works, including how those activities will be funded; and

(B) is subject to the department's certification that the plan meets the requirements of (A) of this paragraph;

(12) any other information that the applicant believes will help demonstrate eligibility for financial assistance; and

(13) any other information requested by the department.

(b) An applicant may apply for financial assistance for preconstruction activities by submitting the information required under (a)(1), (2), (6), (7), (12), and (13) of this section.

(c) The department will, in its discretion, approve a financial assistance application if

(1) the project is on the department's priority list to receive funding during the fiscal year in which the financial assistance is requested;

(2) money is available for the project;

(3) the project is eligible for financial assistance from the Alaska clean water fund;

(4) the applicant has demonstrated to the department's satisfaction its ability to repay the financial assistance;

(5) the applicant has submitted, and the department has accepted, the information required under this section; and

(6) the applicant has met the applicable requirements of 18 AAC 76.040. (Eff. 11/19/88, Register 108; am 8/2/97, Register 143; am 12/29/2000, Register 156; am 9/10/2017, Register 223)

**Authority:** AS 46.03.020 AS 46.03.720  
AS 46.03.032

**18 AAC 76.035. Loan Subsidy.** (a) The department may set out affordability criteria in its priority list process under 18 AAC 76.020, as part of its criteria and procedures for distribution of financial assistance.

(b) The department may provide a subsidy to an applicant in the form of principal



forgiveness, according to the criteria and procedures established in the priority list process in 18 AAC 76.020, if the applicant demonstrates that it meets affordability criteria, and if the department has included those criteria in the priority list process.

(c) An applicant seeking principal forgiveness may apply to the department for a loan subsidy at the time it submits its financial assistance application under 18 AAC 76.030, if the department has included affordability criteria in the priority list process. (Eff. 9/27/2009, Register 191)

**Authority.** AS 46.03.020 AS 46.03.032

**18 AAC 76.040. Environmental review.** (a) The applicant shall consult with the department during facility planning to determine the required level of environmental review. The department will notify the applicant of the type of environmental documentation that will be required, if any. If required by the department, the applicant shall

(1) submit a request for categorical exclusion, with supporting documentation as specified by the department;

(2) prepare an environmental information document in a format specified by the department; or

(3) prepare an environmental impact statement in a format specified by the department.

(b) If an applicant requests a categorical exclusion, the department will review the request and, based upon documentation submitted by the applicant, the department will notify the applicant that

(1) the project qualifies for a categorical exclusion;

(2) the applicant must prepare an environmental information document; or

(3) the applicant must prepare an environmental impact statement.

(c) If an environmental information document is required, the department will

(1) conduct an environmental assessment based upon the applicant's environmental information document and issue

(A) a draft Finding of No Significant Impact; or

(B) a notice of need to prepare an environmental impact statement; and

(2) provide a 30-day public comment period after public notice, and

(A) if negative impacts are identified, reassess the project to determine

whether an environmental impact statement will be required; or

(B) if no new information is received during the public comment period that would require a reassessment, issue a final Finding of No Significant Impact.

(d) If an environmental impact statement is required, the applicant shall

(1) contact all affected state agencies to determine the required scope of the document;

(2) prepare and submit a draft environmental impact statement to all affected state agencies for review and comment;

(3) conduct a public hearing; and

(4) prepare and submit a final environmental impact statement, incorporating all state agency and public comments, for review and approval by the department.

(e) After completion by the applicant, and approval by the department, of all requirements listed in (d) of this section, the department will issue a Record of Decision documenting the mitigation measures to be required of the applicant. The financial assistance agreement will be conditioned upon those mitigation measures.

(f) If a federal environmental review of the project has been conducted, the department will, in its discretion, adopt all or part of the federal agency's documentation.

(g) An environmental determination under this section is valid for five years. If a financial assistance application is received for a project with an environmental determination more than five years old, or if conditions have changed significantly since the last determination, the department will reevaluate the project, environmental conditions, and public views and will

(1) reaffirm the earlier decision; or

(2) require supplemental information to the earlier environmental impact statement, environmental information document, or request for categorical exclusion; based upon a review of the updated document, the department will

(A) issue and distribute a revised notice of categorical exclusion, Finding of No Significant Impact, or Record of Decision; or

(B) reaffirm its earlier decision. (Eff. 11/19/88, Register 108; am 8/2/97, Register 143; am 3/14/2002, Register 161)

**Authority:** AS 46.03.020      AS 46.03.032      AS 46.03.720

**18 AAC 76.050. Ability to repay.** (a) In deciding whether to approve a request for

financial assistance from the Alaska clean water fund, the department will consider the following factors in evaluating an applicant's ability to repay financial assistance, and will require that each factor be documented or satisfied before approval is given:

(1) certification that any debt service requirement and debt service coverage test is expected to be met for the term proposed in the financial assistance application;

(2) the applicant's

(A) ability to assess and collect revenues for the project;

(B) debt repayment history;

(C) current and overall structure of debt repayment;

(D) revenue bond credit rating, if applicable;

(E) financial statements, if required by the department, including a comparison of actual financial performance to adopted budgeted operations;

(F) history of financial operations;

(G) recent levels of the debt retirement, operations, or similar fund balances;

(H) compliance with state and federal environmental laws;

(I) levels of financial reserves for unforeseen circumstances and prospective judgments from litigation;

(J) adherence to provisions of past and current debt resolutions; and

(K) capital improvement plan and proposed debt issuance program;

(3) a utility rate feasibility study by a qualified independent consultant or registered engineer, if required by the department;

(4) any litigation or threatened litigation that might affect the project or the applicant's ability to pay debt service on the financial assistance;

(5) the demand for the proposed project; and

(6) demographic and economic trends in the proposed service area.

(b) The department will, in its discretion, deny a request for financial assistance if the department finds that the applicant has not adequately documented or satisfied the factors listed in (a) of this section. (Eff. 11/19/88, Register 108; am 8/2/97, Register 143)

**Authority:** AS 46.03.020 AS 46.03.032

**18 AAC 76.060. Financial assistance conditions.** (a) The borrower shall

(1) establish and pledge one or more dedicated sources of revenue for repayment of the financial assistance;

(2) award any construction contract estimated to equal or exceed \$50,000 through a competitive bidding process, unless the department approves another procedure; a construction contract estimated to be less than \$50,000 may be negotiated if the department approves the solicitation and negotiation procedures;

(3) submit to the department for review and approval

(A) a tabulation of construction bids received; and

(B) a copy of the construction contract, which must be awarded to the lowest responsive, responsible bidder unless this requirement is waived by the department;

(4) construct a project capable of operating in accordance with the approved plans and specifications;

(5) if appropriate for the type of project, such as for a wastewater or solid waste project, and if required by the department, prepare and submit a facility operation and maintenance manual that meets department approval;

(6) provide for a user fee system and an ordinance that meet department approval, unless this requirement is waived by the department;

(7) use accounting, audit, and fiscal procedures that conform to generally accepted accounting principles, including standards relating to the reporting of infrastructure assets;

(8) maintain project accounts and records until the project field audit is performed and all audit issues are resolved;

(9) ensure that contracted wages paid for the construction of the facility conform to the prevailing wage rates established for the locality by the United States Department of Labor under 40 U.S.C. 276a - 276a-5 (Davis-Bacon Act), or by the state Department of Labor and Workforce Development under AS 36.05.010, whichever are applicable;

(10) require the construction contractor to furnish performance and payment bonds in accordance with AS 36.25.010; and

(11) submit change orders to the department for approval.

(b) If money is available, and if the department approves a change order submitted under (a)(11) of this section, the department will, in its discretion, amend the financial assistance agreement to reflect any change in project cost.

(c) Within one year after the date that construction has been completed, the borrower shall certify that the facility meets the design specifications and, if applicable, effluent limitations specified in its operating or discharge permit. The borrower shall correct any factor that does not meet design requirements or effluent limitations. If the borrower fails to submit the certification required in this subsection, the balance of the financial assistance will immediately become payable to the department.

(d) The department will, in its discretion, make site visits to inspect construction progress and to determine compliance with 18 AAC 76.005 - 18 AAC 78.100.

(e) The department will, in its discretion, revoke a financial assistance agreement if the borrower has not begun construction within one year after signing the agreement.

(f) Based on the information provided in 18 AAC 76.030, 18 AAC 76.035, and 18 AAC 76.050, the terms and conditions of each financial assistance agreement will be set on a case-by-case basis. (Eff. 11/19/88, Register 108; am 8/2/97, Register 143; am 12/29/2000, Register 156; am 9/27/2009, Register 191; am 9/10/2017, Register 223)

**Authority:** AS 46.03.020                      AS 46.03.090                      AS 46.03.720  
AS 46.03.032

**Editor's note:** As of Register 151 (October 1999), the regulations attorney made technical revisions under AS 44.62.125(b)(6) to reflect the name change of the Department of Labor to the Department of Labor and Workforce Development made by ch. 58, SLA 1999 and the corresponding title change of the commissioner of labor.

**18 AAC 76.070. Post-construction activities.** (a) After the project is completed, the borrower shall notify the department in writing of initiation of operation. The department will then conduct a final on-site inspection of the project. Within one year after initiation of operation, the department will, in its discretion, conduct an audit of project expenditures. If construction is completed except for minor items, and the facility is operating, but the borrower has not sent its notice of initiation of operation, the department will, in its discretion, assign an initiation of operation date and conduct a final on-site inspection.

(b) The borrower shall provide for adequate operation and maintenance of the facility and shall retain operating personnel as required by 18 AAC 74 to operate the facility. (Eff. 11/19/88, Register 108; am 8/2/97, Register 143)

**Authority:** AS 46.03.020                      AS 46.03.090                      AS 46.03.720  
AS 46.03.032

**18 AAC 76.080. Repayment; finance charges.** (a) Except as provided in 18 AAC

76.035 for a loan subsidy, the amortization schedule for financial assistance from the Alaska clean water fund will be negotiated between the borrower and the department. The department will not negotiate an amortization schedule that exceeds 30 years or the projected useful life of the project, as determined by the department. The department will apply amortization repayments first toward any penalties owed, second toward the fees owed, third toward the interest, and fourth toward the principal.

(b) When the department makes an offer of financial assistance, the department will establish a fixed finance charge that includes both the fee specified in 18 AAC 76.085(a) and interest. The finance charge will be assessed on financial assistance as follows:

(1) for a contract term over 20 years and up to 30 years, accrual of finance charges begin one year after the date of the first payment to the borrower; the department will assess a finance charge at a rate of two percent plus 75 percent of The Bond Buyer's Municipal Bond Index's Current Day – Yield to Maturity that is greater than four percent as published on the date that the department extends the financial assistance offer; the finance charge will be determined by using the calculation  $2 + [0.75 \times (\text{Bond Index} - 4)]$ , where "Bond Index" is equal to The Bond Buyer's Municipal Bond Index's Current Day – Yield to Maturity;

(2) for a contract term of five to 20 years, accrual of finance charges begins one year after the date of the first payment to the borrower; the department will assess a finance charge at a rate of one and one-half percent plus 62.5 percent of The Bond Buyer's Municipal Bond Index's Current Day – Yield to Maturity that is greater than four percent as published on the date that the department extends the financial assistance offer; the finance charge will be determined using the calculation  $1.5 + [0.625 \times (\text{Bond Index} - 4)]$ , where "Bond Index" is equal to The Bond Buyer's Municipal Bond Index's Current Day – Yield to Maturity;

(3) for a contract term of less than five years, accrual of finance charges begins one year after the date of the first payment to the borrower; the department will assess a finance charge of one percent plus 50 percent of The Bond Buyer's Municipal Bond Index's Current Day – Yield to Maturity that is greater than four percent as published on the date that the department extends the financial assistance offer; the finance charge will be determined using the calculation  $1 + [0.5 \times (\text{Bond Index} - 4)]$ , where "Bond Index" is equal to The Bond Buyer's Municipal Bond Index's Current Day – Yield to Maturity;

(4) for financial assistance that is repaid within one year after the first payment to the borrower, the department will assess a finance charge equal to one-half of one percent of the total amount of financial assistance disbursed.

(c) Repealed 8/2/97.

(d) Repealed 8/2/97.

(e) A borrower under a financial assistance agreement under 18 AAC 76.005 - 18 AAC 76.100 that is in effect on December 29, 2000 may, within one year after that date, convert the financial assistance agreement to a new finance rate, if all other terms of the agreement remain in effect. (Eff. 11/19/88, Register 108; am 8/2/97, Register 143; am 12/29/2000, Register 156; am 3/14/2002, Register 161; am 4/28/2005, 5/28/2008, Register 186

Register 174; am 9/27/09, Register 191; am 9/10/2017, Register 223)

**Authority:** AS 46.03.020 AS 46.03.032 AS 46.03.035

**18 AAC 76.085. Fee rate and payment.** (a) In the amortization schedule established under 18 AAC 76.080 for financial assistance provided from the Alaska clean water fund, the department will include a fixed fee of one-half of one percent of the total amount of financial assistance disbursed.

(b) The department will charge the fee specified in (a) of this section on any financial assistance payments received on or after December 29, 2000. (Eff. 12/29/2000, Register 156)

**Authority:** AS 46.03.020 AS 46.03.034 AS 46.03.035  
AS 46.03.032

**18 AAC 76.086. Eligibility of expenditures.** The department will use the fee specified in 18 AAC 76.085(a) for

(1) direct department costs, including

- (A) salaries;
- (B) equipment;
- (C) travel; and
- (D) professional service contracts;

(2) indirect department costs, including

- (A) rent costs allocable to the program; and
- (B) utility costs allocable to the program; and

(3) other eligible purposes as permitted by 33 U.S.C. 1381 – 1387 (Subchapter VI, State Water Pollution Control Revolving Funds, Clean Water Act). (Eff. 12/29/2000, Register 156)

**Authority:** AS 46.03.020 AS 46.03.034 AS 46.03.035  
AS 46.03.032

**18 AAC 76.090. Disbursement.** (a) The department will make payments from the Alaska clean water fund based on invoices submitted by the borrower if the requirements of 18 AAC 76.005 - 18 AAC 76.100 and the financial assistance agreement are met.

(b) The department will make no more than one payment during any 30-day period. (Eff. 11/19/88, Register 108; am 8/2/97, Register 143)

**Authority:** AS 46.03.020 AS 46.03.032

**18 AAC 76.100. Reconsideration of financial assistance request.** (a) If the department denies a financial assistance request, the applicant may file a written request for reconsideration with the director within 30 days after receipt of the department's decision.

(b) The director will, in the director's discretion, reconsider a request if the applicant

(1) shows that there has been a substantial change in the circumstances that led to the denial;

(2) provides relevant information to the department that was not available when the denial was made; or

(3) shows that the department's decision contains a technical, legal, or administrative error, or a misinterpretation of data, the correction of which might reverse the decision. (Eff. 11/19/88, Register 108; am 8/2/97, Register 143)

**Authority:** AS 46.03.020 AS 46.03.032



**Article 2. Alaska Drinking Water Fund.****Section**

- 200. Purpose
- 205. Types of financial assistance
- 210. Eligible drinking water systems
- 215. Eligible projects and activities: allowable costs
- 220. Priority list process
- 225. Financial assistance application process
- 230. Assistance for disadvantaged systems
- 235. Environmental review
- 240. Ability to repay
- 245. Financial assistance conditions
- 250. Post-construction activities
- 252. Loan classifications
- 255. Repayment; finance charges
- 257. Fee rate and payment
- 258. Eligibility of expenditures
- 260. Disbursement of financial assistance
- 265. Reconsideration of financial assistance request

**18 AAC 76.200. Purpose.** (a) The provisions of 18 AAC 76.200 - 18 AAC 76.265 apply to financial assistance from the Alaska drinking water fund, a federally-sponsored fund authorized by 42 U.S.C. 300f - 42 U.S.C. 300j-25 (Safe Drinking Water Act), and created by AS 46.03.036(a).

(b) Except as otherwise provided by the Safe Drinking Water Act, the Alaska drinking water fund may be used only as provided in 42 U.S.C. 300j-12(a)(2) for drinking water projects, including projects to plan, design, build, construct, or rehabilitate a public drinking water collection, storage, treatment, or distribution system. (Eff. 8/2/97, Register 143)

**Authority:** AS 46.03.020                      AS 46.03.036                      AS 46.03.720

**18 AAC 76.205. Types of financial assistance.** (a) The Alaska drinking water fund may be used to

(1) make loans to drinking water systems eligible for assistance under 18 AAC 76.210 for eligible projects and activities under 18 AAC 76.215;

(2) buy or refinance the debt obligation of a municipality or a combination of municipalities if the debt obligation is incurred and construction started after July 1, 1993;

(3) guarantee or purchase insurance for a debt obligation, all of the proceeds of which finance an eligible project under 18 AAC 76.215, if the guarantee or purchase would improve the marketability of the obligation or reduce the interest rate applicable to the obligation; and

(4) earn interest on the amounts deposited in the fund.

(b) The department may apply a portion of the capitalization grant received under 42 U.S.C. 300j-12 (Safe Drinking Water Act) to cover the department's reasonable costs of administering the Alaska drinking water fund and to provide technical assistance to an eligible drinking water system. (Eff. 8/2/97, Register 143; am 3/14/2002, Register 161)

**Authority:** AS 46.03.020 AS 46.03.036 AS 46.03.720

**18 AAC 76.210. Eligible municipal drinking water systems.** (a) Except as provided in (b) of this section and as limited in (c) of this section, the following types of drinking water systems are eligible for financial assistance from the Alaska drinking water fund:

(1) a drinking water collection, storage, treatment, or distribution system;

(2) a drinking water system that delivers water by a constructed conveyance other than a pipe, for purposes specified in 42 U.S.C. 300f(4)(B)(i)(III).

(b) Federally-owned systems are not eligible to receive financial assistance from the Alaska drinking water fund.

(c) Except as provided in (d) of this section, financial assistance will not be provided to a drinking water system that

(1) does not have the technical, managerial, and financial capacity under 18 AAC 80.207 to ensure compliance with the requirements of 40 C.F.R. 141 and 18 AAC 80 (Drinking Water); or

(2) is in significant noncompliance with any requirement of 40 C.F.R. 141 or 18 AAC 80.

(d) A drinking water system described in (c) of this section may receive assistance from the Alaska drinking water fund if

(1) the use of the assistance will ensure compliance; and

(2) for a system described in (c)(1) of this section, the owner or operator of the system agrees to undertake feasible and appropriate changes in operations, including changes in ownership, management, accounting, rates, maintenance, consolidation, or alternative water supply and the department determines that the changes are necessary to ensure that the system has the technical, managerial, and financial capability to maintain compliance with the requirements of the Safe Drinking Water Act and the Alaska drinking water regulations. (Eff. 8/2/97, Register 143; am 12/29/2000, Register 156; am 3/14/2002, Register 161)

**Authority:** AS 46.03.020 AS 46.03.036 AS 46.03.720

**18 AAC 76.215. Eligible projects and activities; allowable costs.** (a) An owner of a drinking water system described in 18 AAC 76.210 may apply to the department for financial assistance from the Alaska drinking water fund for a project or activity that will facilitate compliance with 40 C.F.R. 141, as applicable, or that will otherwise significantly further the health protection objectives of 42 U.S.C. 300f - 42 U.S.C. 300j-26 (Safe Drinking Water Act) and 18 AAC 80 (Drinking Water).

(b) Except as provided in (e) of this section, the following projects and activities are eligible for financial assistance from the Alaska drinking water fund:

(1) projects to address health standards under the Safe Drinking Water Act and 18 AAC 80 (Drinking Water) that have been violated, or to prevent future violations of the Safe Drinking Water Act and 18 AAC 80, including projects to achieve and maintain compliance with the primary maximum contaminant levels in 18 AAC 80.300, the surface water treatment requirements in 18 AAC 80.600 - 18 AAC 80.699, the total coliform requirements in 18 AAC 80.400 - 18 AAC 80.440, and the lead and copper requirements in 18 AAC 80.500 - 18 AAC 80.565;

(2) projects to replace aging drinking water infrastructure, including projects to

(A) rehabilitate or develop sources (excluding dams, dam rehabilitation, reservoirs, and water rights) to replace contaminated sources;

(B) install or upgrade water treatment systems if the department determines that the project would improve the quality of drinking water to comply with primary or secondary maximum contaminant levels in 18 AAC 80.300;

(C) install or upgrade storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering the water system; and

(D) install or replace transmission and distribution pipes to prevent contamination caused by leaks or breaks in the pipe or to improve water pressure to safe levels;

(3) the purchase of a portion of another system's hydraulic capacity, if that is a more cost-effective solution than the development of a system's own source;

(4) for eligible drinking water systems described in 18 AAC 76.210(a)(2), projects to provide central treatment or treatment at the point of entry as described in 42 U.S.C. 300f(4)(B)(i)(III);

(5) acquisition of land or an interest in land, if needed to locate an eligible project and the purchase is from a willing seller;

(6) the cost of complying with 42 U.S.C. 4601 - 42 U.S.C. 4655 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970);

(7) planning and design of an eligible project, including

(A) investigations or studies necessary to complete a project plan, including preparation of an environmental assessment report; and

(B) surveys, designs, plans, work drawings, and specifications; and

(8) restructuring, including consolidation, of a drinking water system that is in noncompliance or that lacks the technical, managerial, and financial capacity under 18 AAC 80.207 to maintain the system, if the assistance will ensure that the system returns to and maintains compliance with the requirements of 40 C.F.R. 141 and 18 AAC 80 (Drinking Water).

(c) Financial assistance from the Alaska drinking water fund may be used only for the following allowable costs, if required for an eligible project or activity:

(1) demolition costs and costs to plan, design, construct, alter, remodel, rehabilitate, improve, or extend a facility, including related administration, inspection, and supervision costs;

(2) the cost of acquiring real property or an interest in real property;

(3) the eligible portion of change orders approved by the department;

(4) machinery, furnishings, and equipment;

(5) laboratory fees for monitoring and testing needed for planning, design, and construction purposes;

(6) the purchase of vehicles used for facility operation, if approved by the department;

(7) insurance required by the financial assistance agreement;

(8) computer systems dedicated to facility use;

(9) reasonable landscaping costs associated with an eligible project;

(10) source water and distribution system protection devices; and

(11) costs associated with restructuring, including consolidation, of a drinking water system, including legal fees and water buy-in fees.

(d) Force account labor and equipment charge rates may be paid from financial assistance received from the Alaska drinking water fund, if included in the financial assistance agreement. To be approved, labor rates must be provided to the department in a form that documents basic pay, benefits, leave, and holiday rates.

(e) The following projects and activities are not eligible for financial assistance from the Alaska drinking water fund:

- (1) dams or dam rehabilitation;
- (2) reservoirs, except
  - (A) finished water reservoirs; and
  - (B) reservoirs that are part of the treatment process and located on the same property as the treatment facility;
- (3) land acquisition for dams, dam rehabilitation, or reservoirs, except reservoirs identified in (2)(A) or (B) of this subsection;
- (4) water rights, except water rights that are owned by a system that is being purchased through consolidation as part of a capacity development strategy to acquire and maintain technical, managerial, and financial capacity as described in 42 U.S.C. 300g-9;
- (5) laboratory fees for monitoring, other than those described in (c)(5) of this section;
- (6) operation and maintenance expenses;
- (7) projects needed mainly for fire protection;
- (8) projects proposed for drinking water systems that lack the technical, managerial, and financial capacity under 18 AC 80.207 to ensure compliance with the requirements of 40 C.F.R. 141 and 18 AAC 80 (Drinking Water), unless the financial assistance will enable the system to return to and maintain compliance and the owner of the system agrees to undertake feasible and appropriate changes in operations as described in 18 AAC 76.210(d)(2);
- (9) projects proposed for drinking water systems that are in significant noncompliance with any requirement of 40 C.F.R. 141 or 18 AAC 80, unless the assistance will enable the system to return to and maintain compliance; and
- (10) projects primarily intended to serve future population growth by supplying or attracting such growth, except to the extent that growth is reasonably expected to occur over the useful life of a facility. (Eff. 8/2/97, Register 143; am 12/29/2000, Register 156; am 3/14/2002, Register 161)

**Authority:** AS 46.03.020      AS 46.03.036      AS 46.03.720

**18 AAC 76.220. Priority list process.** (a) To be eligible for financial assistance from the Alaska drinking water fund, a project must be included on the Alaska drinking water fund priority list of projects developed by the department. Projects will be funded in accordance with the priority list, if money is available. As part of its intended use plan required by 42 U.S.C. 300j-12(b), the department will establish a proposed project priority list. The plan and list will be made available for public review and comment for at least 30 days. After the public comment period on the intended use plan and the project priority list closes, the department may,

based upon public comment, revise the proposed list. After receiving its final priority list ranking, an applicant must resubmit a request under (b) of this section each time the department issues a public notice of a proposed revision to the project priority list. The deadline for submission of such requests will be stated in the public notice. If an applicant fails to resubmit a request by the stated deadline, the applicant's ranking is subject to change or deletion.

(b) An applicant seeking financial assistance from the Alaska drinking water fund must first submit a request for a priority list ranking on a form provided by the department.

(c) The department will review priority list requests and will score the projects, using the following criteria:

(1) the eligibility of the system under 18 AAC 76.210, including the applicant's operations, maintenance, and management capabilities;

(2) the eligibility of the project under 18 AAC 76.215;

(3) projects that address the most serious risk to human health;

(4) projects necessary to ensure compliance with the Safe Drinking Water Act and the Alaska drinking water regulations, 18 AAC 80; and

(5) projects that assist systems most in need of financial assistance that are cost-effective, on a per-household basis, according to the affordability criteria established in the priority list process under this section.

(d) The department will prepare a proposed project priority list by ranking the projects scored under (c) of this section. As required by 42 U.S.C. 300j-12(b), the department will include in the intended use plan described in (a) of this section bypass criteria and procedures for bypassing a project or accelerating the funding schedule for another project. (Eff. 8/2/97, Register 143; am 12/29/2000, Register 156)

**Authority:** AS 46.03.020                      AS 46.03.036                      AS 46.03.720

**18 AAC 76.225. Financial assistance application process.** (a) The department will review and approve applications for financial assistance from the Alaska drinking water fund according to the criteria set out in 18 AAC 76.200 - 18 AAC 76.265.

(b) To apply for financial assistance for construction, an applicant shall submit

(1) a complete application on forms provided by the department;

(2) a resolution adopted by the applicant's governing body that authorizes the application and acceptance of the assistance;

(3) a description of the proposed project;

(4) an analysis of the feasibility of the project, identifying necessary federal and state permits and including a cost estimate prepared by a registered engineer; the analysis must demonstrate that

(A) the selected project is the most cost-effective, feasible alternative studied; and

(B) the proposed project will not have a significant negative environmental impact, using the criteria and standards set out in 18 AAC 76.235;

(5) documentation of the availability of and the commitment to use one or more dedicated sources of revenue or adequate security for repayment or, adequate security for repayment of the financial assistance;

(6) certification that a separate account within the applicant's accounting system has been established through which financial assistance received from the Alaska drinking water fund will be administered;

(7) a financial capability assessment for the proposed project, on a form provided by the department, that demonstrates the applicant's ability to repay the financial assistance as described in 18 AAC 76.240 and to operate and maintain the completed project;

(8) certification from the applicant's attorney that the applicant has the legal authority to incur the debt created by the assistance sought and that the proposed assistance agreement would be legally enforceable;

(9) plans and specifications for the project, prepared and signed by a registered engineer, with a summary of design criteria; and

(10) any other information that might help demonstrate eligibility for financial assistance, if requested by the department.

(c) An applicant may apply for financial assistance for pre-construction activities by submitting the information required under (b)(1), (2), (3), (5), (6), and (10) of this section.

(d) The department may approve a financial assistance application if

(1) the project is on the department's priority list to receive financial assistance when the financial assistance is requested;

(2) money is available for the project;

(3) the system is eligible for financial assistance under 18 AAC 76.210;

(4) the project is eligible for financial assistance under 18 AAC 76.215;

(5) the applicant has demonstrated to the department's satisfaction as determined under 18 AAC 76.240, the applicant's ability to repay the financial assistance;

(6) the applicant has submitted, and the department has accepted, the information required under this section; and

(7) the applicant has met the applicable requirements of 18 AAC 76.235. (Eff. 8/2/97, Register 143; am 12/29/2000, Register 156; am 3/14/2002, Register 161)

**Authority:** AS 46.03.020 AS 46.03.036 AS 46.03.720

**18 AAC 76.230. Assistance for disadvantaged systems.** (a) A disadvantaged system or a system that expects to become a disadvantaged system as a result of a proposed drinking water project may apply to the department for a loan subsidy at the time it submits its financial assistance application under 18 AAC 76.225.

(b) A system is considered disadvantaged if the entire area served or to be served by a drinking water system meets the affordability criteria established in the priority list process described in 18 AAC 76.220.

(c) The department may provide a subsidy to a disadvantaged system in the form of principal forgiveness, according to the procedures and criteria established in the priority list process in 18 AAC 76.220. As required by 42 U.S.C. 300j-12(b), the department will include in the intended use plan described in 18 AAC 76.220(a) procedures and criteria for a subsidy under this section, including affordability criteria. (Eff. 8/2/97, Register 143; am 12/29/2000, Register 156; am 3/14/2002, Register 161)

**Authority:** AS 46.03.020 AS 46.03.036 AS 46.03.720

**18 AAC 76.235. Environmental review.** (a) An applicant for financial assistance from the Alaska drinking water fund shall consult with the department during project planning to determine the required level of environmental review for the project. The department will notify the applicant of the type of environmental documentation that will be required, if any. If required by the department, the applicant shall

(1) submit a request for categorical exclusion, with supporting documentation as specified by the department;

(2) prepare an environmental information document in a format specified by the department; or

(3) prepare an environmental impact statement in a format specified by the department.

(b) If an applicant requests a categorical exclusion, the department will review the request and, based upon documentation submitted by the applicant, the department will notify the applicant that

(1) the project qualifies for a categorical exclusion;



- (2) the applicant must prepare an environmental information document; or
  - (3) the applicant must prepare an environmental impact statement.
- (c) If an environmental information document is required, the department will
- (1) conduct an environmental assessment based upon the applicant's environmental information document and issue
    - (A) a draft Finding of No Significant Impact; or
    - (B) a notice to prepare an environmental impact statement; and
  - (2) provide a 30-day public comment period after public notice, and
    - (A) if significant negative impacts are identified, reassess the project to determine whether an environmental impact statement will be required; or
    - (B) if no new information is received during the public comment period that would require a reassessment, issue a final Finding of No Significant Impact.
- (d) If an environmental impact statement is required, the applicant shall
- (1) contact all affected state agencies to determine the required scope of the document;
  - (2) prepare and submit a draft environmental impact statement to all affected state agencies for review and comment;
  - (3) conduct a public hearing; and
  - (4) prepare and submit a final environmental impact statement, incorporating all state agency and public comments, for department review and approval.
- (e) After completion by the applicant, and approval by the department, of all requirements of (d) of this section, the department will issue a Record of Decision documenting the mitigation measures to be required of the applicant. The applicant's financial assistance agreement will be conditioned upon those mitigation measures.
- (f) If a federal environmental review of the project has been conducted, the department will, in its discretion, adopt all or part of the federal agency's documentation.
- (g) An environmental determination under this section is valid for five years. If a financial assistance application is received for a project with an environmental determination more than five years old, or if conditions have changed significantly since the last determination, the department will reevaluate the project, environmental conditions, and public views and will

(1) reaffirm the earlier decision; or

(2) require supplemental information to the earlier environmental impact statement, environmental information document, or request for categorical exclusion; based upon a review of the updated document, the department will

(A) issue and distribute a revised notice of categorical exclusion, Finding of No Significant Impact, or Record of Decision; or

(B) reaffirm its earlier decision. (Eff. 8/2/97, Register 143; am 3/14/2002, Register 161)

**Authority:** AS 46.03.020 AS 46.03.036 AS 46.03.720

**18 AAC 76.240. Ability to repay.** (a) In deciding whether to approve a request for financial assistance from the Alaska drinking water fund, the department will consider the following factors in evaluating an applicant's ability to repay financial assistance and will require that each factor be documented before approval is given:

(1) certification that any debt service requirement and debt service coverage test is expected to be met for the term proposed in the application;

(2) the applicant's

(A) ability to assess and collect revenues for the project and to bring effective sanctions on non-paying customers;

(B) debt repayment history;

(C) current and overall structure of debt repayment;

(D) revenue bond credit rating, if applicable;

(E) financial statements, if required by the department, including a comparison of actual financial performance to adopted budget operations;

(F) history of financial operations;

(G) recent levels of the debt retirement, operations, or similar fund balances;

(H) compliance with state and federal environmental laws;

(I) levels of financial reserves for unforeseen circumstances and prospective judgments from litigation;

(J) adherence to provisions of past and current debt resolutions; and

(K) capital improvement plan and proposed debt issuance program;

(3) a utility rate feasibility study by a qualified independent consultant or registered engineer, if required by the department;

(4) any litigation or threatened litigation that might affect the project or the applicant's ability to pay debt service on the financial assistance;

(5) the demand for the proposed project; and

(6) demographic and economic trends in the proposed service area.

(b) The department will, in its discretion, deny a request for financial assistance if the department finds that the applicant has not adequately documented the factors in (a) of this section. (Eff. 8/2/97, Register 143; am 3/14/2002, Register 161)

**Authority:** AS 46.03.020                      AS 46.03.036                      AS 46.03.720

**18 AAC 76.245. Financial assistance conditions.** (a) The borrower shall

(1) establish and pledge one or more dedicated sources of revenue for repayment of the financial assistance;

(2) award any construction contract estimated to equal or exceed \$50,000 through a competitive bidding process unless the department approves another procedure; a construction contract estimated to be less than \$50,000 may be negotiated if the department approves the solicitation and negotiation procedures;

(3) for a construction project, submit for department review and approval

(A) a tabulation of bids received; and

(B) a copy of the executed construction contract, which must be awarded to the lowest responsive, responsible bidder unless this requirement is waived by the department;

(4) construct a project capable of operating in accordance with the approved plans and specifications;

(5) if required by the department, prepare and submit for department approval a facility operation and maintenance manual;

(6) provide for a user fee system and an ordinance that meets department approval, unless this requirement is waived by the department;

(7) use accounting, audit, and fiscal procedures that conform to generally

accepted accounting principles;

(8) maintain project accounts and records until the project field audit is performed and all audit issues are resolved;

(9) ensure that contracted wages paid for the construction of the facility conform to the prevailing wage rates established for the locality by the Alaska Department of Labor and Workforce Development under AS 36.05.010;

(10) require the construction contractor to furnish performance and payment bonds in accordance with AS 36.25.010; and

(11) submit change orders for department approval.

(b) The department will, in its discretion, make site visits to inspect construction progress and to determine compliance with 18 AAC 76.200 - 18 AAC 76.265.

(c) If funding is available, and if the department approves a change order submitted under (a)(11) of this section, the department will, in its discretion, amend the financial assistance agreement to reflect any change in project cost.

(d) The department will, in its discretion, revoke a financial assistance agreement if the borrower has not begun construction within one year after signing the agreement.

(e) Based on the information provided in 18 AAC 76.225, 18 AAC 76.230 and 18 AAC 76.240, the terms and conditions of each financial assistance agreement will be set on a case-by-case basis. (Eff. 8/2/97, Register 143; am 12/29/2000, Register 156)

**Authority:** AS 46.03.020                      AS 46.03.036                      AS 46.03.720

**Editor's note:** As of Register 151 (October 1999), the regulations attorney made technical revisions under AS 44.62.125(b)(6) to reflect the name change of the Department of Labor to the Department of Labor and Workforce Development made by ch. 58, SLA 1999 and the corresponding title change of the commissioner of labor.

**18 AAC 76.250. Post-construction activities.** (a) When a project is completed, the borrower shall notify the department in writing of initiation of operation. The department will then conduct a final onsite inspection of the project. If construction is complete except for minor items and the facility is operating, but the borrower has not sent its notice of initiation of operation, the department will, in its discretion, assign an initiation of operation date and conduct a final onsite inspection.

(b) After construction is complete, the borrower shall certify to the department that the facility is complete and is operating properly.

(c) The borrower shall provide for adequate operation and maintenance of the facility and shall retain sufficient operating personnel as required by 18 AAC 74 to operate the facility.

(d) The department will, in its discretion, conduct an audit of project expenditures within one year after initiation of operation. (Eff. 8/2/97, Register 143)

**Authority:** AS 46.03.020 AS 46.03.036 AS 46.03.720

**18 AAC 76.252. Loan classifications.** (a) The department will determine an applicant to be qualified for a low-risk loan under this subsection if the applicant provides an unencumbered pledge as security for the loan. The pledge may be provided in the form of a general obligation bond from a municipality or an obligation from a privately-owned utility. An obligation from a privately-owned utility must be rated investment grade by a rating service. The municipality's general obligation bond must be backed by the full faith and credit of the municipality and be supported by unlimited ad valorem taxing power as described in AS 29.47.200. The department will qualify a loan disbursed under this section for a discount of one half of one percent from the finance charge assessed in 18 AAC 76.255(b)(2). As the department determines necessary in order to adequately protect the Alaska drinking water fund, reduce the department's risk, and ensure repayment, the department will attach conditions to the loan that include

(1) an unconditional obligation to pay from specific revenues, unless the obligation is used for the letter of credit described in (6) of this subsection;

(2) a rate covenant equal to the coverage requirements of the loan and all liens;

(3) the obligation to impose and collect revenues sufficient to pay

(A) system operation, maintenance, and replacements costs;

(B) debt service; and

(C) any other financial obligations;

(4) a requirement to establish a reserve that is dedicated to the repayment of the loan, and that is fully funded with cash or an approved equivalent;

(5) for a municipality, or for a municipality and a privately-owned utility applying jointly, the obligation to comply with the state aid intercept provisions of AS 37.15.575; and

(6) for a privately-owned utility, a requirement that the utility maintain a current irrevocable standby letter of credit issued by a bank, in an amount sufficient to cover the department's loan exposure, until the loan agreement has been in force for four years, the project is complete, and the project is expected to continue to have operational revenues sufficient to cover the department's loan exposure.

(b) The department will determine an applicant to be qualified for a standard loan under this subsection if the applicant is unable or unwilling to qualify for the loan type described in (a) of this section, and if the department determines that the applicant has a credit rating and that risk factors do not exist with the applicant's credit. As the department determines necessary in order to adequately protect the Alaska drinking water fund, reduce the department's risk, and ensure repayment, the department will attach conditions to the loan that include

(1) dedicated pledged revenues with a parity or greater position unless the pledged revenues are used for the irrevocable standby letter of credit in (5) of this subsection;

(2) a rate covenant equal to the coverage requirements of the loan and all prior liens;

(3) the obligation to impose and collect revenues sufficient to pay

(A) system operation, maintenance, and replacement costs;

(B) any debt service; and

(C) any other financial obligations.;

(4) for a municipality, or for a municipality and a privately-owned utility applying jointly, the obligation to comply with the state aid intercept provisions of AS 37.15.575; and

(5) for a privately-owned utility, a requirement that the utility maintain a current irrevocable standby letter of credit issued by a bank, in an amount sufficient to cover the department's loan exposure, until the loan agreement has been in force for four years, the project is complete, and the project is expected to continue to have operational revenues sufficient to cover the department's loan exposure.

(c) The department will determine an applicant to be qualified for a discretionary loan under this subsection if the applicant does not have a credit rating or if the department determines that risk factors exist with the applicant's credit. The department will not approve a loan under this subsection if the total principal amount of all the outstanding loans of the discretionary type exceeds five percent of the total assets of the Alaska drinking water fund. The department will attach to a loan disbursed under this subsection a surcharge of two and one-half percent in addition to the finance charge assessed in 18 AAC 76.255(b)(2) or (3), as appropriate. As the department determines necessary in order to adequately protect the Alaska drinking water fund, reduce the department's risk and ensure repayment, the department will attach conditions to the loan that include

(1) pledged revenues that are sufficient to repay the loan; those pledged revenues need not be necessarily sufficient to pay all system operation, maintenance, and replacements costs;

(2) dedicated sources of revenue to repay the loan that may have encumbrances or a less than parity position;

(3) for a municipality or a municipality and a privately-owned utility applying jointly,

(A) the obligation to comply with the state aid intercept provisions of AS 37.15.575; and

(B) a demonstration, by ordinance or resolution, of economic and political support for the project, as determined by the department;

(4) for a privately-owned utility, a requirement that the utility

(A) maintain a current irrevocable standby letter of credit issued by a bank, in an amount sufficient to cover the department loan exposure, until the loan agreement has been in force for four years, the project is complete, and the project is expected to continue to have operational revenues sufficient to cover the department's loan exposure; and

(B) pledge unencumbered assets as collateral.

(d) For purposes of this section, an irrevocable standby letter of credit must be an approved arrangement where a bank makes a payment to the department on behalf of the applicant, if the terms and conditions of the loan agreement are not complied with. The terms and conditions of the irrevocable standby letter of credit may not be changed unless the bank and the department agree. (Eff. 3/14/2002, Register 161)

**Authority:** AS 37.15.575 AS 46.03.036

**18 AAC 76.255. Repayment; finance charges.** (a) Except as provided in 18 AAC 76.230 for a disadvantaged system, the amortization schedule for financial assistance from the Alaska drinking water fund will be negotiated between the borrower and the department. The department will not negotiate an amortization schedule that exceeds 30 years. Repayment of financial assistance must begin within one year after the date of initiation of operation of the facility, or within one year after the date of a refinancing under 18 AAC 76.205(a)(2). The department will apply amortization repayments first toward any penalties owed, second toward any fees owed, third toward the interest, and fourth toward the principal.

(b) When the department makes an offer of financial assistance, the department will establish a fixed finance charge that includes the fee specified in 18 AAC 76.257(a), interest, and any adjustment described in 18 AAC 76.252(a) or (c), as appropriate. The finance charge will be assessed on financial assistance as follows:

(1) for a contract term over 20 years and up to 30 years, accrual of finance charges begins one year after the date of the first payment to the borrower; the department will assess a finance charge at a rate of two percent plus 75 percent of The Bond Buyer's Municipal Bond Index's Current Day – Yield to Maturity that is greater than four percent as published on the date that the department extends the financial assistance offer; the finance charge will be determined using the calculation  $2 + (0.75 \times (\text{Bond Index} - 4))$ , where "Bond Index" is equal to The Bond Buyer's Municipal Bond Index's Current Day – Yield to Maturity;

(2) for a contract term of five to 20 years, accrual of finance charges begins one year after the date of the first payment to the borrower; the department will assess a finance charge at a rate of one and one-half percent plus 62.5 percent of The Bond Buyer's Municipal Bond Index's Current Day – Yield to Maturity that is greater than four percent as published on the date that the department extends the financial assistance offer; the finance charge will be determined using the calculation  $1.5 + [0.625 \times (\text{Bond Index} - 4)]$ , where "Bond Index" is equal to The Bond Buyer's Municipal Bond Index's Current Day – Yield to Maturity;

(3) for a contract term of less than five years, accrual of finance charges begins one year after the date of the first payment to the borrower; the department will assess a finance charge of one percent plus 50 percent of The Bond Buyer's Municipal Bond Index's Current Day – Yield to Maturity that is greater than four percent as published on the date that the department extends the financial assistance offer; the finance charge will be determined using the calculation  $1 + [0.5 \times (\text{Bond Index} - 4)]$ , where "Bond Index" is equal to The Bond Buyer's Municipal Bond Index's Current Day – Yield to Maturity;

(4) for financial assistance that is repaid within one year after the first payment to the borrower, the department will assess a finance charge equal to one-half of one percent of the total amount of financial assistance disbursed.

(c) A borrower under a financial assistance agreement under 18 AAC 76.200 – 18 AAC 76.265 that is in effect on December 29, 2000 may, within one year after that date convert the financial assistance agreement to a new finance rate, if all other terms of the agreement remain in effect. (Eff. 8/2/97, Register 143; am 12/29/2000, Register 156; am 3/14/2002, Register 161; am 11/10/2007, Register 184; am 9/10/2017, Register 223)

**Authority:** AS 46.03.020 AS 46.03.039 AS 46.03.720  
AS 46.03.036

**18 AAC 76.257. Fee rate and payment.** (a) In the amortization schedule established under 18 AAC 76.255 for financial assistance provided from the Alaska drinking water fund, the department will include a fixed fee of one-half of one percent of the total amount of financial assistance disbursed.

(b) The department will charge the fee specified in (a) of this section on any financial assistance payments received on or after December 29, 2000. (Eff 12/29/2000, Register 156).

**Authority:** AS 46.03.020 AS 46.03.038 AS 46.03.039  
AS 46.03.036

**18 AAC 76.258. Eligibility of expenditures.** (a) The department will use the fees specified in 18 AAC 76.257(a) for

(1) direct department costs, including



- (A) salaries;
- (B) equipment;
- (C) travel; and
- (D) professional service contracts;

(2) indirect department costs, including

- (A) rent costs allocable to the program; and
- (B) utility costs allocable to the program; and

(3) other eligible purposes as permitted by 42 U.S.C. 300j – 12 (Safe Drinking Water Act: State Revolving Loan Funds). (Eff 12/29/2000, Register 156)

**Authority:** AS 46.03.020                      AS 46.03.038                      AS 46.03.720  
                   AS 46.03.036                      AS 46.03.039

**18 AAC 76.260. Disbursement of financial assistance.** (a) The department will make payments from the Alaska drinking water fund based on requests submitted on a form provided by the department if the requirements of 18 AAC 76.200 - 18 AAC 76.265 and the financial assistance agreement are met. The department may require documentation of costs, such as invoices and copies of checks.

(b) The department will make no more than one payment during any 30-day period. (Eff. 8/2/97, Register 143; am 3/14/2002, Register 161)

**Authority:** AS 46.03.020                      AS 46.03.036                      AS 46.03.720

**18 AAC 76.265. Reconsideration of financial assistance request.** (a) If the department denies a request for financial assistance from the Alaska drinking water fund, the applicant may file a written request for reconsideration with the director within 30 days after receipt of the department's decision.

(b) The director will, in the director's discretion, reconsider a request if the applicant

(1) shows that there has been a substantial change in the circumstances that led to the denial;

(2) provides relevant information to the department that was not available when the denial was made; or

(3) shows that the department's decision contains a technical, legal, or administrative error or misinterpretation of data, the correction of which might reverse the decision.  
(Eff. 8/2/97, Register 143)

**Authority:** AS 46.03.020 AS 46.03.036 AS 46.03.720

**Article 3. General provisions.****Section**

900. (Repealed)

990. Definitions

**18 AAC 76.900.** Repealed. (Eff. 11/19/88, Register 108; repealed 8/2/97, Register 143)

**18 AAC 76.990. Definitions.** Unless the context indicates otherwise, in this chapter,

(1) "alternative treatment technologies" means any proven wastewater treatment process or technique that provides for the reclaiming and reuse of water, productive recycling of wastewater constituents, other elimination of the discharge of pollutants, or the recovery of energy;

(2) "building" means the erection, acquisition, alteration, remodeling, improvement, or extension of a project receiving financial assistance under this chapter;

(3) "change order" means a written order to the contractor authorizing an addition, deletion, or revision in the work within the scope of the contract, including any required adjustment in contract price, time, or specifications;

(4) "debt service" means the cost or expense of borrowing money, including the cost of a proposed level of borrowing or an existing debt, usually expressed in terms based on a period of time, such as the amount per year;

(5) "dedicated source of revenue" means revenue pledged by a borrower to repay financial assistance, including refinancing, received under this chapter, or revenue pledged to repay bonded indebtedness if the application is for a bond guarantee under this chapter; "dedicated source of revenue" includes property taxes, sales taxes, state shared revenues, special assessments, connection fees, reserve fund balances, and user fees;

(6) "department" means the Alaska Department of Environmental Conservation;

(7) "director" means the director of the department's division that oversees the Alaska clean water fund and the Alaska drinking water fund programs;

(8) "disadvantaged system" means a drinking water system that serves or will serve an area that meets the affordability criteria established in the priority list process in 18 AAC 76.220;

(9) "distribution system" means post-treatment storage facilities, conduits, mains, lines, fixtures, pumping stations, or other devices used to carry water to the consumer;

(10) "EPA" means the U. S. Environmental Protection Agency;

(11) "excessive infiltration or inflow" means the amount of infiltration or inflow that can be economically eliminated from a sewer system, as determined in a cost-effective analysis that compares the costs for correcting the infiltration or inflow conditions to the total costs for transportation and treatment of the infiltration or inflow;

(12) "facility" means a facility that is eligible for financial assistance under this chapter;

(13) "force account" means work performed by the borrower with its own employees and equipment;

(14) "generally accepted accounting principles" means fiscal controls and accounting procedures sufficient to assure proper accounting for payments received, disbursements made, and balances remaining, including *Generally Accepted Accounting Principles* promulgated by the Government Accounting Standards Board and those standards contained in the *Government Auditing Standards: 1994 Revision*, promulgated by the Comptroller General of the United States;

(15) "infiltration" means water other than wastewater that enters a sewer system from the ground through defective pipes, pipe joints, connections, or manholes;

(16) "inflow" means water other than wastewater that enters a sewer system from roof leaders, drains, manhole covers, cross-connections between storm sewers and sanitary sewers, catch basins, cooling towers, stormwaters, surface run-off, street wash waters, or drainage;

(17) "initiation of operation" means the date on which the facility begins operating for the purposes for which it was planned, designed, and built;

(18) "innovative treatment technologies" means a treatment process and technique that has not been fully proven under the circumstances of its contemplated use and that represents a significant advancement over the state of the art in respect to reduction in life-cycle costs or environmental benefits;

(19) "maintenance" means work performed to repair equipment, correct malfunctioning equipment, prevent equipment failure, or replace minor equipment items;

(20) repealed 9/10/2017;

(21) repealed 3/14/2002;

(22) repealed 12/29/2000;

(23) "operation" means control of the unit processes and equipment that make up the collection, treatment and distribution process, including financial and personnel management, records, laboratory control, process control, safety, and emergency operation planning;

(24) "operation and maintenance manual" means a guide for use by a treatment facility operator that includes

- (A) design information;
- (B) identification of adequate financial and personnel resources for proper facility operation;
- (C) startup procedures for each unit process and piece of equipment;
- (D) monitoring and control information;
- (E) a maintenance management system;
- (F) a schedule for lubrication, oil, and filter changes;
- (G) laboratory tests to monitor and control unit processes;
- (H) safety procedures;
- (I) troubleshooting procedures; and
- (J) an emergency operating plan;

(25) "other qualified entity" has the meaning given in AS 46.03.032(p);

(26) "preconstruction activities" means activities that will culminate in a construction project, including

- (A) engineering, architectural, legal, fiscal, economic, and environmental investigations or studies;
- (B) surveys, designs, plans, working drawings, and specifications;
- (C) laboratory testing; and
- (D) purchase of equipment with long manufacturing or delivery times, if approved by the department;

(27) "project" means the activities or tasks identified in the financial assistance agreement, for which the borrower may expend, obligate, or commit money;

(28) "recreational and open space opportunities" include use of

- (A) rights-of-way for recreational trails;
- (B) the project roadway for access to natural and historic areas for camping or nature appreciation, or to waterways for canoeing, boating, and fishing;

(C) the project site for sports;

(D) on-site facilities for educational purposes; and

(E) effluent or sludge to improve recreational areas;

(29) "registered engineer" means an engineer registered in Alaska under AS 08.48;

(30) "revenue-producing facilities" means facilities with treatment processes that result in a by-product that is sold to an entity outside the facility, including the sale of methane gas from anaerobic digestion and the sale of effluent or sludge for agricultural purposes and for multiple-purpose projects;

(31) "Safe Drinking Water Act" means 42 U.S.C. 300f - 42 U.S.C. 300j-25 (Safe Drinking Water Act Amendments of 1996);

(32) "solid waste" has the meaning given in AS 46.03.900;

(33) "solid waste management facility," as that term is used in AS 46.03.032(d), means a facility used for the processing, disposal, discharge, deposit, injection, consolidation, or placement of solid waste into or onto the land, and includes transfer stations and sanitary landfills;

(34) "total cost" means, at a minimum, all operation and maintenance expenses, including depreciation, and principal and interest for loan repayments;

(35) "user fee" means a charge levied on a user of a facility for the user's proportionate share of the total cost of the operation of that facility;

(36) "value-engineering" means a cost control technique using a systematic process to identify unnecessarily high costs without sacrificing the reliability of the project

(37) "variance" means a variance granted to a public water system by the department under 18 AAC 80.370;

(38) "wastewater" means liquid and water waste from residences, commercial buildings, industrial plants, and institutions; "wastewater" includes stormwater;

(39) "wastewater collection system" means pipelines or conduits, pumping stations, forcemains, and any other related structure, device, or application used to conduct wastewater to a wastewater treatment system;

(40) "wastewater treatment system" means a device, structure, or equipment used to treat, neutralize, stabilize, or dispose of wastewater and residuals;

(41) "water collection system" means pipelines or conduits, pumping stations, forcemains, and any other related structure, device, or application used to conduct water to a water treatment system;

(42) “water treatment system” means the structure and appurtenances, including chemicals feeders, coagulation and sedimentation tanks, filtration devices, ion exchange apparatus, aeration tanks, or other works used to condition, purify, or refine water for human consumption;

(43) “approved” means approved by the department;

(44) “drinking water system” means a system, a device, a structure, or equipment that provides, treats, stores, or distributes drinking water to the public and that is eligible for assistance under AS 46.03.036.

(45) “The Bond Buyer’s Municipal Bond Index’s Current Day – Yield to Maturity” means the daily price for 40 long-term municipal bonds as published in the Bond Buyer Municipal Bond Index, or a similar index of tax exempt municipal securities if the index described in this paragraph is no longer available. (Eff. 8/2/97, Register 143; am 12/29/2000, Register 156; am 3/14/2002, Register 161; am 9/10/2017, Register 223)

**Authority:** AS 46.03.020                      AS 46.03.036                      AS 46.03.720  
AS 46.03.032