ARTICLE 33.1-35
REVOLVING LOAN FUND

Chapter
33.1-35-01 State Water Pollution Control Revolving Fund

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STATE WATER POLLUTION CONTROL REVOLVING FUND

Section
33.1-35-01-01 Definitions
33.1-35-01-02 Eligibility
33.1-35-01-03 Refinancing
33.1-35-01-04 Intended Use Plan
33.1-35-01-05 Annual Public Hearing on Proposed Intended Use Plan
33.1-35-01-06 Emergency Amendment of Intended Use Plan
33.1-35-01-07 Project Priority List Removal Procedure
33.1-35-01-08 Project Bypass Procedure
33.1-35-01-09 Deadline for Application
33.1-35-01-10 Reserve for Section 319 Nonpoint Source Management Projects
33.1-35-01-11 Application Procedure
33.1-35-01-12 Loan Agreement
33.1-35-01-13 Release
33.1-35-01-14 Loan Amendments
33.1-35-01-15 Inspections
33.1-35-01-16 Loan Default
33.1-35-01-17 Financing Method
33.1-35-01-18 Interest Rate Determination
33.1-35-01-19 Amount of Financial Assistance
33.1-35-01-20 Files and Records
33.1-35-01-21 Reservation of Rights

33.1-35-01-01. Definitions.

For the purpose of this chapter, the following definitions apply:

1. "Act" means the federal Water Pollution Control Act of 1972, Public Law 92-500, as amended by the Water Quality Act of 1987 [Pub. L. 100-4; 33 U.S.C. 1251-1376].

2. "Bank of North Dakota" means the Bank of North Dakota as created by North Dakota Century Code chapter 6-09.

3. "Public finance authority" means the North Dakota public finance authority created by North Dakota Century Code chapter 6-09.4, or a public body and instrumentality of the state which succeeds to the powers, duties, and functions of the bond bank.

4. "Construction" means the erection, acquisition, alteration, reconstruction, improvement, or extension of wastewater treatment works or section 319 projects, including preliminary planning to determine the economic feasibility; the engineering, architectural, legal, fiscal, and economic investigations and studies; surveys; designs; plans; procedures; and other similar action necessary in the building and inspection supervision of the construction of wastewater treatment works or section 319 projects.

5. "Department" means the department of environmental quality.

6. "Director" means the director of the division of municipal facilities, the department of environmental quality.

7. "Facility plan" means an engineering evaluation of present and future treatment needs, an evaluation of several treatment alternatives, and the selection and justification of a final treatment alternative.

8. "Financial agent" means the North Dakota public finance authority or such other agent as the department selects.

9. "Financial assistance" means the lending of funds from the state revolving fund by the department and its financial agent to a political subdivision through the purchase of its bond, note, warrant, or other evidence of indebtedness issued to finance or refinance all or part of the construction of wastewater treatment works or section 319 projects. Financial assistance also includes all other forms of eligible assistance under the Act.

10. "Intended use plan" means a document prepared annually by the department on behalf of the state which provides assurances and specific proposals, including a list of potential projects eligible for assistance from the state revolving fund and a federal payment schedule.

11. "Political subdivision" means any municipality, intermunicipal or interstate agencies, or any other entity constituting a political subdivision under the laws of North Dakota.

12. "Project cost" means the cost of construction of wastewater treatment works and the capitalized interest necessary for the construction financing.

13. "Section 319 project" means a project authorized and undertaken in conformance with section 319 of the Act [33 U.S.C. 1329] that uses some form of land treatment, watershed treatment, or best management practices to improve water quality.

14. "State revolving fund" means the state water pollution control revolving loan fund as established in North Dakota Century Code chapter 61-28.2.

15. "Wastewater treatment works" means a facility used for the disposal of pollutants which may include wastewater treatment facilities, infiltration or inflow correction, major sewer system rehabilitation, new collector sewers, new interceptors and appurtenances, combined sewer correction, and storm sewer projects.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-02. Eligibility.

1. A political subdivision is eligible for financial assistance under the state revolving fund if its project is included in the current intended use plan.

2. Loans may be made only to political subdivisions that:

   a. Demonstrate tangible financial capability to assure sufficient revenues to operate and maintain the facility for its useful life and to repay the loan.

   b. Establish an acceptable method of repayment of the loan.

   c. Agree to maintain financial records in accordance with governmental accounting standards and to conduct an annual audit of the facility's financial records.

d. Provide such assurances as are required by the Act and as reasonably requested by the department.

e. Provide a department-approved facility plan.

3. Financial assistance may be awarded for projects included in the intended use plan for the following activities:

a. The financing or refinancing of construction or other assistance of publicly owned wastewater treatment works as defined in section 212 of the Act that appear on North Dakota's project priority list and included in the intended use plan. This includes planning, design, and construction of storm sewers after September 30, 1990; or

b. Implementation of a nonpoint source pollution control management program under section 319 of the Act.

c. Operation and maintenance manual preparation and operator startup training.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-03. Refinancing.

Loans may be made to political subdivisions to refinance existing debt obligations if they were incurred and building was initiated after March 7, 1985, and if the debts were used to finance projects identified in the intended use plan. In addition, the projects must satisfy the statutory requirements contained in section 602(b)(6) of the Act.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-04. Intended use plan.

The department will annually prepare a wastewater treatment works construction priority list according to the department's review and point award. All proposed wastewater treatment works must be on the priority list in order to be funded under the state revolving fund program. It is not necessary for section 319 projects to be on the priority list, but they must appear in the intended use plan. The priority list also must be incorporated into the annual intended use plan.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-05. Annual public hearing on proposed intended use plan.

Upon tentative completion of the annual revision of the intended use plan, the department shall conduct a hearing to receive oral and written comments from the public on the proposed intended use plan. At least thirty calendar days' notice must be given of the public hearing in at least two newspapers of general circulation in different parts of the state. Written comments must be accepted during this period. After all comments are received, the department shall compile and adopt the final list at the hearing.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-06. Emergency amendment of intended use plan.

The department may add a project to the intended use plan, by emergency amendment, if the proposed project will alleviate or mitigate a dire physical threat to the health and safety of persons or if the proposed project is necessary to take advantage of an unexpected economic development opportunity which will be lost unless action is taken. Economic opportunity considerations will not be the primary focus of any state revolving fund project. The primary considerations in every project will be public health, water quality, and public safety issues.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-07. Project priority list removal procedure.

The department may remove a project from the intended use plan if the project has been fully funded or the project is no longer eligible under the priority system or the political subdivision responsible for the project has expressed in writing no interest in the program.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-08. Project bypass procedure.

The department may bypass the priority established for funding as follows:

1. The political subdivision being bypassed provides to the state a written statement endorsing the bypass; or

2. The political subdivision being bypassed fails to submit information within the timeframe required by written notice from the department.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-09. Deadline for application.

Project assistance applications may be submitted at any time by eligible political subdivisions.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-10. Reserve for section 319 nonpoint source management projects.

The department may set aside a portion of the available funds for section 319 nonpoint source projects for the first six months of each fiscal year. The amount of the set-aside must be determined by the department.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-11. Application procedure.

The application procedure will be designed by the department and approved by the environmental protection agency to include all necessary requirements as contained in the Act and applicable federal regulations, state laws, and rules. The application procedure will be contained in the state revolving fund procedures handbook.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-12. Loan agreement.

1. The loan agreement will be a legally binding contract between the financial agent and the political subdivision. The agreement will contain general conditions and may, if necessary, contain special conditions.

2. The general conditions of a loan agreement will include the requirements of laws, rules, and policies of the state of North Dakota.

3. The special conditions of the loan agreement will relate to specific provisions unique for an individual project including time schedules and performance requirements and such other requirements as are reasonably requested by the financial agent.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-13. Release.

By its acceptance of the loan agreement, the political subdivision releases and discharges the department, its officers, agents (including its financial agent), and employees from all liabilities, obligations, and claims arising out of the project work under the loan agreement.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-14. Loan amendments.

The loan agreement may be amended in writing according to the terms of the respective loan agreement including an amendment when the amount of loan funds necessary to pay project costs are greater than the original amount in the loan agreement.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-15. Inspections.

During the building of the project, the political subdivision shall provide inspection services sufficient to ensure that the project is constructed in accordance with approved plans and specifications. The department will conduct interim project inspections to determine compliance with approved plans and specifications and loan agreement, as appropriate.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-16. Loan default.

The political subdivision must agree that upon default in the payments of principal and accrued interest on the loan or in the performance of any covenant or condition of the loan agreement, the department, through its financial agent, may at its option, do one or more of the following:

1. Declare immediately due and payable the entire principal amount then outstanding and the accrued interest;

2. Incur and pay reasonable expenses, through the account of the political subdivision, for repair, maintenance, and operation of the facility, and other expenses necessary to cure the cause of default; or

3. Proceed to enforce payment of such interest or principle or other amount then due and payable pursuant to applicable provisions of law or loan agreement.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-17. Financing method.

1. A loan shall be made for a period of time not to exceed thirty years or the design life of the wastewater treatment works facility, whichever is shorter.

2. Interest on the loan accrues and must be paid as provided in the loan agreement.

3. All repayment schedules must be established by the terms and conditions of the loan agreement. The repayment by the political subdivision of the loan will begin within one year after the project is capable of operation or:

   a. For special assessment warrants, upon a date which is sufficient to allow time for special assessments to be spread in the tax levy year for the political subdivision; and

   b. For revenue bonds, at the time specified in the respective loan agreement which shall reasonably attempt to begin after the project is in full operation.

   In all cases, repayments must begin within one year after the project is capable of operation.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-18. Interest rate determination.

The interest rate on a loan will be determined by the department with consultation from the financial agent and must be based on the combined costs related to the total financial state revolving fund loan package. The interest rates on individual loans may vary; however, the rate will not exceed the interest rate generally available for a comparable financing at the time the rate is established.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-19. Amount of financial assistance.

A political subdivision may apply for any amount of financial assistance. The department may award less than the amount requested in the application. In determining the financial assistance for

each political subdivision, the department may consider the proposed construction and the proposed project costs of such activities, the resources available to the department within the state revolving fund, and the ability to carry out the proposed project, including the ability to repay the financial assistance.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-20. Files and records.

All files and records pertaining to the project must be maintained by the political subdivision throughout the project and made accessible to the department and the environmental protection agency and their agents according to state and federal law. These files and records must be retained by the political subdivision for at least three years beyond the term of the loan.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70

33.1-35-01-21. Reservation of rights.

1. Nothing in this chapter prohibits a political subdivision from requiring more assurances, guarantees, indemnity, or other contractual requirements from any party performing project work.

2. Nothing in this chapter affects the department's right to take remedial action, including administrative enforcement action and actions for breach of contract against a political subdivision that fails to carry out its obligations under this chapter. Any remedial action contemplated by the department or its financial agent will be coordinated with the best interests of the state revolving fund.

3. Review or approval of facility plans, design drawings and specifications, or other documents by or for the department, does not relieve the political subdivision of its responsibility to properly plan, design, build, and effectively operate and maintain the treatment works as required by state or federal law, permits, the loan agreement, and good management practices. The department is not responsible for increased costs resulting from defects in the plans, design drawings and specifications, or other subagreement documents.

History: Effective January 1, 2019.
General Authority: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28.2-01; S.L. 2017, ch. 199, § 70