



ADMINISTRATIVE RULES OF MONTANA



36.24.102 DEFINITIONS AND CONSTRUCTION OF RULES

In this subchapter, the following terms have the meanings indicated below and, in certain cases, are supplemental to the definitions contained in Title 75, chapter 5, part 11, MCA, sections 601 through 607 of the Federal Water Pollution Control Act, 33 USC 1251 through 1387, as amended, and ARM 17.40.302. Terms used but not defined have the meanings prescribed in ARM 17.40.302 or the indenture of trust. Any conflict between this subchapter and the indenture of trust shall be resolved in favor of the indenture of trust.

- (1) "Act" means Water Pollution Control State Revolving Fund Act, Title 75, chapter 5, part 11, MCA.
- (2) "Administrative expense surcharge" means a surcharge on each loan charged by the department to the borrower expressed as a percentage per annum on the outstanding principal amount of the loan, payable by the borrower on the same dates that payments of principal and interest on the loan are due, calculated in accordance with these rules.
- (3) "Administrative fee" means the fee expressed as a percentage of the initial committed amount of the loan retained by the department from the proceeds of the loan at closing, calculated in accordance with these rules.
- (4) "Application" means the form of application provided by the department and the department of environmental quality which must be completed and submitted in order to request a loan.
- (5) "Binding commitment" means an executed commitment agreement.
- (6) "Bond" means an obligation issued by a municipality pursuant to the provisions of Montana law and the code.
- (7) "Borrower" means a municipality or private person to whom a loan is made.
- (8) "Borrower obligation" means a bond or loan agreement.
- (9) "Borrower resolution" means a resolution of a borrower authorizing the issuance of bonds or a loan agreement.
- (10) "Closing" means, with respect to a loan, the date of delivery of the borrower resolution and the borrower obligation to the department.
- (11) "Code" means the Internal Revenue Code of 1986, as amended.
- (12) "Commitment agreement" means a written agreement between the borrower and the department pursuant to which the department agrees to make a loan to the borrower in a specified principal amount on or before the date and subject to the terms and conditions specified in the agreement.

- (13) "Debt" means debt incurred to acquire, construct, extend, improve, add to, or otherwise pay expenses related to the system, without regard to the source of payment and security for such debt (i.e., without regard to whether it is, for example, general obligation revenue or special assessment debt) .
- (14) "Department" means the Montana department of natural resources and conservation.
- (15) "Department of environmental quality" means the Montana department of environmental quality.
- (16) "Eligible water pollution control project" means projects that meet the requirements of the federal act and that are approved by the department of environmental quality, including, without limitation, certain wastewater collection and treatment system projects, sewage system projects, storm sewer or storm drainage projects, and solid waste management projects and other nonpoint source projects.
- (17) "EPA" means the United States environmental protection agency.
- (18) "EPA agreement" means the operating agreement between the state and the EPA.
- (19) "Federal act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. 1251 through 1387, as amended.
- (20) "General obligation" means an obligation of a municipality pledging the full faith and credit of and unlimited taxing power of the municipality.
- (21) "Governing body" means the duly elected or appointed board, council, or commission or other body authorized by law to govern the affairs of the municipality.
- (22) "Gross revenues" means with respect to revenue bonds, all revenues derived from the operation of a sewage, wastewater, storm sewer or storm drainage system, from a non-point source project, including but not limited to rates, fees, charges, and rentals imposed for connections with and for the availability, benefit, and use of the water, sewage, wastewater, storm sewer or storm drainage system, or nonpoint source project as now constituted and of all replacements and improvements thereof and additions thereto, and from penalties and interest thereon, and from any sales of property acquired for the system or for or in connection with the nonpoint source project and all income received from the investment of all moneys on deposit in system accounts.
- (23) "Indenture of trust" means the indenture of trust between the board of examiners and a trustee establishing and implementing the program, establishing certain terms and conditions for the sale and issuance of the state's bonds to fund the program, providing for the application of the proceeds of the state's bonds and the repayments of the state's bonds and establishing the funds and accounts for the program.
- (24) "Intended use plan" means the document prepared by the department of environmental quality, which identifies uses of the funds in the program and describes how those uses support the goals of the program.
- (25) "Loan" means the loan of money from the department to a municipality or private person from the state revolving fund in accordance with the provision of the act and these rules.
- (26) "Loan agreement" means an agreement entered into between a borrower that is a private person and the department evidencing the loan.

- (27) "Loan loss reserve surcharge" means a surcharge expressed as percentage per annum on the outstanding principal amount of the loan at the rate determined in these rules and imposed on all borrowers unless waived in accordance with the provisions of these rules.
- (28) "Municipality" means municipality as defined in 75-5-1102(6) , MCA.
- (29) "Net revenues" means the entire amount of gross revenues of the system or project less the actual operation and maintenance cost plus additional annual costs of operation and maintenance estimated to be incurred, including sums to be deposited in an operating reserve.
- (30) "Nonpoint source" means the source of pollutants which originate from diffuse runoff, seepage, drainage or infiltration.
- (31) "Nonpoint source management plan" means the department of environmental quality's approval management plan relating to nonpoint source projects.
- (32) "Nonpoint source project" means a project that has been approved in the source management plan and that is eligible and has qualified for financing under the program pursuant to the federal act, the act, these rules, and applicable department of environmental quality rules.
- (33) "Origination fee" means a fee in an amount equal to a percentage of the committed amount of the loan, as specified by the department, payable by the borrower at closing to the department either from proceeds of the loan or other funds of the borrower.
- (34) "Outstanding bond" means any bonds currently outstanding payable from gross or net system revenues.
- (35) "Priority list" means the list of projects expected to receive financial assistance under the program, ranked in accordance with a priority system developed under Section 1296 of the federal act.
- (36) "Private person" shall have the meaning ascribed to such term in 75-5-1002(7) , MCA.
- (37) "Program" means the Montana water pollution control state revolving fund program.
- (38) "Project" shall have the meaning ascribed to such term in 75-5-1102(9) , MCA.
- (39) "Project costs" means the costs of a project which under accepted accounting practice are capital costs of projects authorized in accordance with law, including but not limited to payments due for work and materials performed and delivered under construction contract, architectural, engineering feasibility inspection, supervision, fiscal and legal expenses, the cost of lands and easements, interest accrued on bonds during the period of construction of facilities financed thereby and for six months thereafter, the establishment of reserve requirement, to the extent permitted by the EPA and payment of cost of issuing bonds.
- (40) "Reserve requirement" means the amount required to be maintained in a reserve fund securing the payment of the bond as set forth in the commitment agreement, which amount shall be equal to the maximum annual debt service on the bond in the then current or any future fiscal year during the term of the bond (or if other bonds payable from the revenues of the system are then outstanding, the maximum aggregate annual debt service on all outstanding, the maximum additional bond proposed to be issued in the then current or any future fiscal year during the term of the outstanding bonds and the additional bond proposed to be issued) .
- (41) "Revenue" means revenues (gross or net) received by the borrower from or in connection with the operation of the system or project.

- (42) "Revenue bonds" means bond payable from the net revenues derived from the system.
- (43) "Sewage system" means a conduit intended to carry liquid and water carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.
- (44) "Solid waste management system" means any system that qualifies as a nonpoint source project which controls the storage, treatment, recycling, recovery, or disposal of solid waste, and for purposes of this chapter, improvements to such system that qualify as a nonpoint source project, that may include the acquisition of land, installation of liners, monitoring of wells, construction and closure of landfills, or composting facilities, and all necessary and related equipment.
- (45) "Special assessments" means assessments imposed on a property benefited from the construction or operation of a project in accordance with Title 7, chapter 7, part 21, and Title 7, chapter 7, parts 41 and 42, MCA.
- (46) "Special improvement district bonds" means bonds payable from special assessments.
- (47) "State bonds" means the state's general obligation water pollution control state revolving fund program bonds.
- (48) "State revolving fund" means the water pollution control state revolving fund established under 75-5-1106 , MCA.
- (49) "State allocation account" means the account in which state monies received through the sale of the state's bonds are deposited.
- (50) "Storm drainage or storm sewer system" means any device or system for the collection, conveyance, disposal and treatment of storm waters and runoff.
- (51) "System" means the sewage, wastewater, storm drainage or storm sewer system, or solid waste management system of a municipality or private person and all extensions, improvements, and betterments thereof.
- (52) "Tax increment revenue bond" means a tax increment urban renewal revenue bond issued by a municipality pursuant to Title 7, chapter 15, parts 42 and 43, MCA, or other applicable law.
- (53) "Treatment works" means treatment works as defined under Section 1292 of the federal act.
- (54) "Wastewater" means sewage, industrial waste, other waste, and drainage of sewage from all sources, or any combination thereof.
- (55) "Wastewater system" means a public sewage system or other system that collects, transports, treats, or disposes of wastewater.

Authorizing statute(s): 75-5-1105, MCA

Implementing statute(s): 75-5-1102 and 75-5-1113, MCA

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