

Environmental Conservation

ARTICLE 17 WATER POLLUTION CONTROL

TITLE 19 STATE AID: COLLECTION, TREATMENT, AND DISPOSAL OF SEWAGE

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§ 17-1901. Comprehensive studies and reports: definitions; state aid; powers and duties of the commissioner; powers of the municipalities.

1. As used in this section:

a. "Comprehensive study and report" means an engineering study for the development of economical projects for the present and future collection, treatment and disposal of sewage for one or more municipalities or any portion thereof. Such study shall contain such information as may be determined by the commissioner, including, but not limited to, the determination of the economical service area or administrative area for sewage works projects; cost estimates covering construction, engineering, legal and other services, land acquisition, and contingencies; proposed method of financing; preparation of estimates of first costs and total annual costs for the construction, and operation and maintenance of the recommended facilities; basic data such as general plan for sewage treatment plant site, flow, size and capacity of proposed units, and location, size or capacity of main trunk sewers, subtrunks, pumping stations, force mains, and outfalls; basic information so that sewage works and sewerage systems may be enlarged economically to serve future areas and population; and development of major alternative solutions. Such study shall not provide for minor sewer extensions or for sewer plans for small subdivisions or small areas, and shall not include the preparation of detail design and engineering drawings, specifications, and contract documents.

b. "Municipality" means county, city, town or village, or any designated agency thereof.

c. "Governing body" means in a county, the county legislative body; in a city, the board of aldermen, a common council, commission or other body vested by its charter or other law with jurisdiction to enact ordinances or local laws, except that in a city having a population of one million or more, if there be a board of estimate, the term "governing body" shall mean such board of estimate; in a town, the town board; and, in a village, the board of trustees.

d. "Agency" means the department, bureau, commission, board, division, agency, public benefit corporation, or committee of any municipality or municipalities, designated by the governing body of such municipality, or by the governing body of each participating municipality in the case

of a joint undertaking, to conduct and develop comprehensive studies and reports.

2. The commissioner may, in the name of the state, make or contract to make, within appropriations therefor, a state grant, for payment during any of the ten successive fiscal years of the state beginning with its fiscal year commencing April 1, 1972, to any municipality, or to two or more municipalities jointly, to cover the entire cost, as determined and approved by the commissioner, of the preparation or updating of a comprehensive study and report for the present and future collection, treatment, and disposal of sewage in such municipality or municipalities.

3. In administering and enforcing the provisions of this section, the commissioner shall:

a. Make an estimate of the funds or appropriations for inclusion annually in the executive budget;

b. Receive applications for state aid in such form and containing such information as he may require;

c. Qualify municipalities for state aid and advise them of such qualifications;

d. Approve the area and scope of any comprehensive study prior to its execution;

e. Approve the person or firm selected by the municipality to perform necessary consulting services for the comprehensive study and reports;

f. Approve the report prior to final payment;

g. Execute contracts for the services of consulting engineers necessary for such study jointly with the municipality or municipalities requesting state aid therefor;

h. Approve the amount of compensation to be paid for such engineering services and the method of determining such compensation, provided, however, that such compensation shall not be computed on a per diem or percentage of estimated costs basis;

i. Approve vouchers for payment of state aid grants;

j. Perform such other and further acts and promulgate such rules and regulations, pursuant to subdivision 2 of section 17-0303, as may be necessary, proper or desirable to carry out effectively the provisions of this section.

4. Any municipality, or municipalities acting jointly, may:

a. Apply to and contract with the commissioner for state aid pursuant to this section;

b. Select, subject to the commissioner's approval, the person or firm to perform necessary consulting engineering services for a comprehensive study and report, and enter into contracts for such services, provided, however, that the commissioner shall also be a party to any such contract;

c. Expend money received from the state pursuant to this section only for purposes consistent with this section.

§ 17-1903. Contracts for construction of sewage treatment works.

1. As used in this section:

a. "Sewage treatment works" means a facility for the purpose of treating, neutralizing or stabilizing sewage, including treatment or disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishings thereof and their appurtenances.

b. "Construction" means the erection, building, acquisition,

alteration, reconstruction, improvement or extension of sewage treatment works; the inspection and supervision thereof; and the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

c. "Eligible project" means a project for the construction of sewage treatment works, (1) for which a permit has been issued pursuant to section 17-0701 of this article, (2) which is, in the judgment of the commissioner, in accord with applicable comprehensive studies and reports made pursuant to section 17-1901, if any, (3) which is, in the judgment of the commissioner, eligible for federal pollution abatement assistance, whether or not federal funds are then available therefor, (4) which conforms with applicable rules and regulations of the commissioner, (5) which is, in the judgment of the commissioner, necessary for the accomplishment of the state water pollution control program, and (6) either (a) the erection, building, acquisition, alteration, reconstruction, improvement or extension of which is commenced or is to be commenced between the date on which this act becomes a law and March 31, 1972, or (b) any portion of the erection, building, acquisition, alteration, reconstruction, improvement or extension of which is undertaken between the date on which this act becomes a law and March 31, 1972.

d. "Municipality" means any county, city, town, village, district corporation, county or town improvement district, or sewer authority now existing in a city, the New York State Environmental Facilities Corporation acting pursuant to subdivision three of section twelve hundred eighty-five of the public authorities law, or any two or more of the foregoing which are acting jointly in connection with an eligible project.

e. "Federal pollution abatement assistance" means funds available to a municipality, either directly or through allocation by the state, from the federal government as grants for construction of sewage treatment works, pursuant to section 6 of the Federal Water Pollution Control Act as enacted by section 1 of the Federal Water Pollution Control Act amendments of 1956 and acts amendatory thereto.

f. "Federal assistance" means funds available, other than by loan, from the federal government to a municipality, either directly or through allocation by the state, for construction of sewage treatment works or which are used for such construction, pursuant to the Federal Water Pollution Control Act and acts amendatory thereto or pursuant to any other federal law or program.

2. For the purpose of discharging the state responsibility with respect to the protection and promotion of the health of the inhabitants of the state by the provision of sewage treatment works, the commissioner, in the name of the state, may enter into contracts with municipalities having power to construct, operate and maintain sewage treatment works, and any such municipality may enter into a contract with the commissioner, concerning eligible projects. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

a. An estimate of the reasonable cost of the project as determined by the commissioner.

b. An agreement by the commissioner to pay to the municipality, during the progress of construction of each phase of the project (said phases to be construction of interceptors, substructure, superstructure, outfalls or other similar major components of a project), subject to final computation and determination of the state grant upon completion

of the entire project reflecting the actual eligible cost thereof, a portion of the cost of the project representing the part of the non-municipal share of the cost of the project that is not paid by the federal government, determined in the following manner:

(1) An amount equal to thirty per cent of the actual cost of the project, or an amount equal to thirty per cent of the estimated reasonable cost of the project, whichever is lower, provided, however, that the state payment under this subparagraph shall be reduced by the amount of any federal assistance received or to be received by the municipality which is in excess of sixty per cent of the cost of the project, together with,

(2) If necessary to limit the municipal share of the cost of the project to forty per cent, an additional amount which when added to the amount of federal assistance, if any, received or to be received by the municipality, equals thirty per cent of the actual cost of the project, or equals thirty per cent of the estimated reasonable cost of the project, whichever is lower.

c. An agreement by the municipality

(1) To proceed expeditiously with, and complete, the project in accordance with plans approved pursuant to section 17-0701;

(2) To commence operation of the sewage treatment works on completion of the project, and not to discontinue operation or dispose of the sewage treatment works without the approval of the commissioner;

(3) to operate and maintain the sewage treatment works in accordance with applicable provisions of this article, the state sanitary code and rules and regulations of the commissioner;

(4) to apply for and make reasonable efforts to secure federal assistance for the project;

(5) to secure the approval of the commissioner before applying for federal pollution abatement assistance, in order to maximize the amounts of such assistance received or to be received for all projects in New York state, including amounts for reimbursement of payments made by the state pursuant to subparagraph (2) of paragraph b of this subdivision; and

(6) to provide for the payment of the municipality's share of the cost of the project.

d. A provision that, in the event that federal assistance which was not included in the calculation of the state payment pursuant to paragraph b of this subdivision becomes available to the municipality, the amount of the state payment shall be recalculated with the inclusion of such additional federal assistance and the municipality shall either (1) pay to the state the amount by which the state payment actually made exceeds the state payment determined by the recalculation or, (2) if such additional federal assistance has not been received by the municipality, authorize the state to receive and retain such amount from the federal government.

3. The commissioner may adopt rules and regulations pursuant to subdivision 2 of section 17-0303 governing the making and enforcing of contracts pursuant to this section.

4. All contracts entered into pursuant to this section shall be subject to approval by the state comptroller, and by the attorney general as to form. All payments by the state pursuant to such contracts shall be made after audit by and upon the warrant of the comptroller on vouchers approved by the commissioner.

5. The commissioner shall prepare and file with the department an annual report on the scope and results of construction undertaken pursuant to this section.

6. In connection with each contract concerning an eligible project the commissioner shall keep adequate records of the amount of the payment by the state pursuant to subparagraph (2) of paragraph b of subdivision 2 of this section, and of the amount of federal assistance received by the municipality. Such records shall be retained by the commissioner and shall establish the basis for application for federal reimbursement of such payments made by the state. The commissioner is hereby authorized to make such applications in appropriate cases.

7. In the event that a project is an eligible project by reason of clause (b) of subparagraph (6) of paragraph c of subdivision 1 of this section rather than by reason of clause (a) of such subparagraph, then the estimated reasonable cost of the project determined pursuant to paragraph a of subdivision 2 of this section and the actual cost of the project for the purpose of subparagraphs (1) and (2) of paragraph b of such subdivision shall be calculated only with respect to that portion of the erection, building, acquisition, alteration, reconstruction, improvement or extension of the sewage treatment works which is undertaken after the date on which this act becomes a law.

8. The commissioner may advance funds to a municipality in accordance with the following provisions:

a. Prior to entering into a contract authorized by subdivision 2 of this section, the commissioner may advance funds to a municipality, in an amount up to five per cent of the estimated reasonable cost of an eligible project as determined by the commissioner, for the purpose of assisting the municipality in defraying expenses of an eligible project incurred in advance of construction. This advance shall be payable, upon the warrant of the comptroller on a voucher approved by the commissioner, after formal acceptance by the municipality of the federal pollution abatement assistance offered pursuant to the provisions of the Federal Water Pollution Control Act and amendments thereto or at the discretion of the commissioner after state submission of the project to the federal government and in the absence of a federal offer.

b. The amount of the advance shall be deducted from the amount of the state payment to be made to the municipality, pursuant to the agreement of the commissioner with the municipality, when construction of the entire project is one-half completed.

c. The municipality shall initiate construction of the project within the time specified in the approved project which, in any event, shall not be later than two years after the date of such advance of funds. If construction is not initiated within such time, the amount of the advance shall be repaid to the state. Whenever such municipality shall fail to make any such repayment to the state, upon request of the commissioner, the state comptroller shall cause to be withheld from state-collected, locally-shared taxes or state aid, whichever he shall determine and to which such municipality would otherwise be entitled, a sum sufficient to reimburse the state for the amount due and owing the state.

9. To the extent that funds available pursuant to chapter 176 of the laws of 1965 (Pure Waters Bond Act) are not needed to finance the state share of projects, the construction of which was undertaken prior to April 1, 1972, the commissioner is authorized to provide assistance to municipalities for the construction of "water quality improvement projects" as defined in section 51-0303 of this chapter. The use of funds as authorized by this subdivision will be governed by the provisions of titles 1 and 3 of article 51 of this chapter, provided however, that subdivisions 1 through 8 of this section will continue to apply to projects construction of which was undertaken prior to April 1,

1972.

§ 17-1905. Operation and maintenance of sewage treatment works.

1. As used in this section:

a. "Operation and maintenance" means and includes all direct costs for labor, direct supervision, vehicles, vessels, supplies, materials, fuel, lubricants, power, and similar costs, the direct costs charged against labor such as retirement, social security, and insurance, and such other charges as real property and school taxes and special assessments and ad valorem levies on sewage treatment works located outside of the corporate limits of the municipality, insurance premiums on sewage treatment plant structures, and equipment. It shall not include any administrative, legislative or overhead costs other than as outlined above, costs of indirect supervision or costs of any capital improvements.

b. "Sewage treatment works" means and includes the structures, equipment, vehicles, vessels, and appurtenances of local government used exclusively for the treatment of sewage and for the disposal of sludge resulting from sewage treatment. Sewage treatment works shall also include outlet sewers, overflow structures on sewer systems, diversion chambers on intercepting sewers, and pumping stations which have replaced a sewage treatment plant or plants. Such treatment works shall not include any other sewers, nor any properties used in whole or in part for the administration of sewage treatment works unless such properties are on the site of, and an integral part of, the sewage treatment plant.

c. "Qualifications for state assistance to municipalities" means and includes submission by the municipality of (1) audited costs of sewage treatment plant operation, (2) standard reports with respect to such plant performance and effect on receiving waters, (3) evidence that the sewage treatment plant is under the supervision of an operator qualified pursuant to section f of chapter 11 of the State Sanitary Code, (4) evidence that the sewage from the tributary area reaches such sewage treatment plant for processing, within practical limitations, (5) evidence that such sewage treatment plant is and has been constructed in substantial compliance with the plans approved by and on file with the commissioner or with approved amendments thereto. The burden of proof to establish qualifications for state assistance rests with the municipality.

d. "Municipality" means a county, city, town, village or district corporation, or a county or town on behalf of a special improvement district, which operates and maintains sewage treatment works, or a city on behalf of a sewer authority now existing in such city which operates and maintains sewage treatment works, or any of the foregoing in cases in which the sewage treatment works is operated and maintained by the New York State Environmental Facilities Corporation pursuant to subdivision 1 of section 1285 of the Public Authorities Law, or the New York state pure waters authority acting pursuant to subdivision 3 of section 1285 of the Public Authorities Law.

2. The commissioner shall apportion and approve for payment state assistance to each municipality which, by itself or in cooperation with one or more other municipalities or other governments, operates and maintains or is responsible for the payment of expenses for operation and maintenance of sewage treatment works during all or part of a fiscal year of such municipality, in accordance with qualifications for state

assistance applicable to the operation and maintenance of such works. Where a special or improvement district or a sewer authority operates and maintains sewage treatment works, state assistance paid to a county, city or town on behalf of such district or authority shall be credited by such county, city or town to such district or authority. Such state assistance, when apportioned among the municipalities applying, shall be for not more than one-third of the amount approved by the commissioner as having been duly expended by the municipality for such operation and maintenance during each of the two successive fiscal years of the municipality beginning with its fiscal year commencing on or after June 1, 1974 and for one-fourth of such amount expended by the municipality during each of the following five successive fiscal years of the municipality beginning with its fiscal year commencing on or after June 1, 1976, for thirty-three and one-third percent of such amount expended by the municipality for its fiscal year commencing between June 1, 1981 and May 31, 1982, for one-third of such amount expended by the municipality for its fiscal year commencing between June 1, 1982 and May 31, 1983, for one-third of such amount expended by the municipality for its fiscal year commencing between June 1, 1983 and May 31, 1984, for one-third of such amount expended by the municipality for its fiscal year commencing between June 1, 1984 and May 31, 1985, for one-third of such amount expended by the municipality for its fiscal year commencing between June 1, 1985 and May 31, 1986, for one-third of such amount expended by the municipality for its fiscal year commencing between June 1, 1986 and May 31, 1987, for one-third of such amount expended by the municipality for its fiscal year commencing between June 1, 1987 and May 31, 1988 and for one-third of such amount expended by the municipality for its fiscal year commencing between June 1, 1988 and May 31, 1989. Provided further, however, if the amount appropriated by the legislature to meet the requirements of this section is insufficient to make the full payments required herein, the amounts to be paid to municipalities pursuant to this section shall be proportionately reduced. Such state assistance shall be paid on account of such expenditures after the termination of the fiscal year of the municipality and after the commissioner shall have determined, in accordance with this section;

a. The total of such expenditures properly attributable to operation and maintenance, and

b. That such operation and maintenance complied with the applicable qualifications for state assistance.

All payments of such state assistance shall be made after audit by and upon warrant of the comptroller on vouchers approved by the commissioner.

3. A municipality applying for state assistance pursuant to this section shall submit to the commissioner within sixty days after the termination of a fiscal year of the municipality an application in such form and containing such information as the commissioner shall require in order to effectuate the purposes of this section and to perform his functions, powers and duties thereunder.

4. In administering and enforcing the provisions of this section the commissioner shall:

a. Annually furnish an estimate to the director of the budget of the amount required to be included in the executive budget for state assistance payable under this section and for such purpose shall have power to require municipalities to file advance estimates of the amounts of state assistance estimated to be payable to them under this section during the next fiscal year of the state.

b. Deny state assistance to any municipality which fails to operate

and maintain its sewage treatment works in accordance with qualifications for state assistance applicable to such works.

c. Make an annual inspection of operating conditions and results, including the collection of necessary flow and analytical data and sampling, at each sewage treatment plant for the maintenance and operation of which state assistance is granted pursuant to this section.

d. Promulgate such rules and regulations pursuant to subdivision 3 of section 17-0303 as may be necessary, proper or desirable to carry out effectively the provisions of this section, including, but not limited to, standards of operating efficiency for sewage treatment works, based on the best usage of the receiving waters, type of treatment provided, and available dilution.

e. On or before May first, nineteen hundred seventy-five, the commissioner shall present to the governor and the legislature a study of the system of state assistance payable under this section. The study shall describe the effect the provision of this state assistance has had on the quality and efficiency of the treatment of sewage by municipalities. It shall also evaluate the effect that would be achieved by changing the type and level of assistance provided. In evaluating these alternatives, it shall consider among other possible courses, the possibilities of providing aid in relation to the level of removal of pollutants achieved, and of providing aid for certain items not now included in approvable operating costs such as repairs and rehabilitation of facilities, and of providing more or less state assistance for the various types of expenses. It shall also evaluate such other aspects of the program as shall be necessary to provide a clear picture of the current effectiveness of the program, how it may be improved, what the annual costs of such improvements may be and whether such current or proposed expenditures do in fact provide a commensurate value to the state. Such study shall contain the commissioner's recommendations for the continuation, elimination or modification of the system of state assistance payable under this section.

§ 17-1907. Contracts for construction of sewer systems.

1. As used in this section:

a. "Construction" means and includes the building, installation, or extension of a sewer system; the inspection and supervision thereof; the engineering, legal, fiscal and economic investigations; studies, surveys, designs, plans, contract drawings, specifications, procedures; and other actions necessary thereto.

b. "Sewer system" means and includes pipe lines or conduits, pumping stations, force mains, and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage (the water-carried human, animal or other treatable wastes from residences, buildings, industrial and commercial establishments or other places) to a point of connection to the sewage treatment works as defined in section 17-1903.

c. "Sewer connection" means and includes a point of connection between a building, residence or other structure and a public sewer.

d. "Residence" means and includes a building or structure which is occupied principally as the home of one or more persons; provided, however, that such building or structure contain not more than two dwelling units.

e. "Municipality" means and includes any county, town, village, district corporation, county or town improvement district, or any two or

more of the foregoing which are acting jointly in connection with an eligible project. For purposes of this section only, an Indian reservation located partly or wholly within New York State shall be construed as a "municipality".

f. "Local governing body" means and includes (1) in a county, the county legislative body (2) in a town, the town board; (3) in a village, the board of trustees; (4) in a district corporation or an improvement district, the governing board; (5) in an Indian reservation, the proper tribal officials.

g. "Federal assistance" means and includes funds available, other than by loan, from the federal government to a municipality, either directly or through allocation by the state, for construction of a sewer system or which are used for such construction, pursuant to any other federal law or program.

i. "Project" means the construction of the whole or connected portion of a sewage collection system. Where the construction of a sewage collection system is phased over a period of years, each phase may be considered as a project.

j. "Eligible project" means a project which in the judgment of the commissioner meets all of the following requirements:

(1) It is in accord with applicable comprehensive studies and reports made pursuant to section 17-1901 of this article;

(2) It conforms with applicable rules and regulations of the commissioner and, in his opinion, reflects a reasonable effort to develop maximum economy in planning, design and construction, with an acceptable ratio between costs and benefits;

(3) It is necessary for the accomplishment of the state water pollution control program;

(4) It is under construction in the period between April 1, 1965 and March 31, 1977;

(5) No portion of the project aided herein is eligible to receive assistance pursuant to section 17-1903;

(6) It serves inhabited residences in existence prior to the effective date of this law;

(7) It serves the public by providing for the collection of sewage (house connections and pipes collecting exclusively industrial, commercial and other nonresidential waste are ineligible);

(8) The project or major part thereof is, at the time of construction, located in: (a) a town which has a total population of seventeen thousand or less persons, or (b) a town outside of village area which has a population density per square mile of less than one hundred persons.

k. "Capital cost" means the actual cost of construction of an eligible project, not to include the cost of securing financing or interest on funds borrowed to finance such construction, and representing that part of the cost of the eligible project that is not paid by the federal government.

l. "Annual debt service" means such amounts as shall be required to be paid annually to amortize obligations (both principal and interest) issued in order to finance the capital cost of an eligible project; provided, however, that for the purposes of state aid, such annual debt service shall be computed on a debt amortization schedule of not less than thirty years nor more than forty years, as the commissioner shall determine, and shall not include any other debt service (whether principal or interest) on obligations of or on behalf of a municipality, other capital costs, or expenditures for the purpose as to which state reimbursement is claimed under any provision of law other than this

section. Where the eligible portion of the sewage collection system serves non-residential users as well as residences, the amount of annual debt service to be used in computing state aid shall be reduced as determined by the commissioner, to compensate for the benefits received by the nonresidential users from such system.

m. "State aid" means financial support made available to a municipality by way of state participation in annual debt service, through contracts entered into between the commissioner and the municipality, upon such terms and conditions as the commissioner shall deem appropriate, which shall be based on the number of residences served by the eligible project and computed as follows:

(1) The amount of annual debt service, as defined above, minus the municipality's share of the expense for construction of the sewage collection system.

(2) The municipality's share shall be the product of the number of residential sewer connections served by the project multiplied by an adjusted rate. The adjusted rate shall be determined by applying a valuation correction from the sum of one hundred twenty-five dollars.

(3) Valuation correction shall consist of minus one dollar for each one thousand dollars or part thereof that the project area per capita full value is less than the average per capita full value for the state excluding all cities. For projects wholly located within a village or town the project area per capita full value shall be the per capita full value for the village, or for the town outside of village area, respectively. For other projects, per capita full value shall be per capita full value of the town or village within which the major portion of the project is located. Per capita full value shall mean the full value of such municipality or area divided by the population thereof.

The amount of such state aid shall be recomputed each year, on the basis of data reported by the local governing body as accepted by the commissioner. State aid shall commence in the state fiscal year beginning April 1, 1971. No state-aid payments shall be made on the basis of any portion of the debt service of eligible projects which was due and payable prior to April 1, 1971.

2. For the purpose of meeting the state responsibility as provided herein, with respect to the protection and promotion of the health of the inhabitants of the state by the provision of sewer systems, the commissioner, in the name of the state, may enter into contracts with municipalities having power to construct, operate and maintain sewer systems, and any such municipality may enter into a contract with the commissioner concerning eligible projects. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

a. The cost of the eligible project as determined by the commissioner.

b. The method by which the eligible project shall be financed.

c. An agreement between the commissioner and the municipality to provide state aid to the municipality each year, during the progress of construction or following completion of construction as may be agreed upon by the parties.

d. An agreement by the municipality

(1) To proceed expeditiously with, and complete, the project in accordance with plans approved pursuant to section 17-0701 of this article;

(2) To commence operation of the sewer system on completion of the project, and not to discontinue operation of the sewer system without the approval of the commissioner,

(3) To operate and maintain the sewer system in accordance with

applicable provisions of this article, the state sanitary code and rules and regulations of the commissioner,

(4) To apply for and make reasonable efforts to secure federal assistance for the project,

(5) To secure the approval of the commissioner before applying for federal assistance, in order to maximize the amounts of such assistance received or to be received for all projects in New York state,

(6) To provide for the payment of the municipality's share of the cost of the project,

(7) To execute a contract or agreement with the owner of the sewage treatment plant, if other than the municipality itself, to accept sewage from the sewage collection system aided under this section, and

(8) To promulgate a municipal sewage use ordinance acceptable to the commissioner.

e. A provision that, in the event that federal assistance which was not included in the calculation of the capital cost becomes available to the municipality, the amount of the state payment shall be recalculated by deducting the amount of such federal assistance from the eligible capital cost, and adjustment shall be made either (1) by the municipality paying to the state the amount by which the state payments actually made exceed the state payments determined by the recalculation or, (2) by deducting the excess paid from subsequent payments to be made by the state.

3. The commissioner may adopt rules and regulations pursuant to subdivision 3 of section 17-0303 of this article governing the making and enforcing of contracts pursuant to this section.

4. All contracts entered into pursuant to this section shall be subject to approval by the state comptroller, and by the attorney general as to form. All payments by the state pursuant to such contracts shall be made after audit by and upon the warrant of the comptroller on vouchers approved by the commissioner.

5. In connection with each contract concerning an eligible project the commissioner shall keep adequate records of the amount of the payment by the state pursuant to subparagraph c of subdivision two of this section, and of the amount of federal assistance received by the municipality.

§ 17-1909. Water pollution control revolving fund agreements.

1. As used in this section:

a. "Allocation" means the amount of moneys allocated to reduce a municipality's or group of municipalities' total financing costs for one or more eligible projects.

b. "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement, enlargement or extension of an eligible project; the inspection and supervision thereof; and the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

c. "Corporation" means the New York state environmental facilities corporation, continued pursuant to section twelve hundred eighty-two of the public authorities law, or any successor thereto.

d. "Eligible project" means a project for construction of a facility which would be eligible for financing under the Federal Water Pollution Control Act:

(i) for which all required federal and state permits have been issued; and

(ii) which the commissioner has determined:

(a) is in accord with applicable comprehensive studies and reports made pursuant to sections 17-0303 and 17-1901 of this article; and

(b) is necessary for the accomplishment of the state water pollution control program formulated pursuant to sections 17-0303 and 17-1901 of this article; and

(c) represents a reasonable effort to develop economic viability in planning, design and construction; and

(d) is a project for which financial assistance is available from the fund; and

(e) conforms with applicable rules and regulations of the department, including a demonstration that design and construction consider future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable.

e. "Financial assistance to a municipality" has the same meaning as set forth in subdivision four of section twelve hundred eighty-five-j of the public authorities law.

f. "Fund" means the water pollution control revolving fund established under section twelve hundred eighty-five-j of the public authorities law.

g. "Intended use plan" means the plan prepared pursuant to subdivision two of this section, identifying the intended uses of the amounts available in the fund, including but not limited to: (i) a list of those projects for construction of publicly owned treatment works on the priority list developed pursuant to subdivision two of this section; (ii) a list of projects developed pursuant to subdivision two of this section anticipated to be financed by the fund through the water pollution control linked deposit program; (iii) a description of the short and long term goals and objectives of the fund; (iv) information on the activities to be supported, including a description of project categories, discharge requirements under the Federal Water Pollution Control Act, terms of financial assistance, and eligible borrowers pursuant to the water pollution control linked deposit program served; (v) the criteria and method established for the distribution of funds; and (vi) the amount of moneys from the fund, not to exceed ten million dollars annually, to be made available for linked loans under the water pollution control linked deposit program during the period covered by such intended use plan.

h. "Municipality" means any county, city, town, village, district corporation, county or town improvement district, Indian reservation wholly within New York state, any public benefit corporation or public authority established pursuant to the laws of New York or any agency of New York state which is empowered to construct and operate an eligible project, or any two or more of the foregoing which are acting jointly in connection with an eligible project.

i. "Project financing agreement" means an agreement between the corporation and one or more municipalities meeting the requirements of subdivision four of this section.

2. The commissioner is required to establish and maintain a list of potentially eligible projects and shall establish, pursuant to rules and regulations, a process for listing potentially eligible projects identified by municipalities and eligible borrowers pursuant to article sixteen of the state finance law and a priority ranking system for the purpose of providing financial assistance to municipalities and eligible borrowers for such projects under this section. In establishing such

system, the commissioner shall take into account:

a. The environmental significance of such potentially eligible projects which shall include, but need not be limited to, an assessment of (i) public health and safety; (ii) protection of environmental resources; (iii) population affected; (iv) attainment of state water quality goals and standards; and (v) compliance with state and federal law, rules and regulations;

b. A municipality's inability as determined by the corporation to pay for such potentially eligible project prior to receipt of such financial assistance;

c. The regional distribution of environmentally significant projects;

d. For agricultural projects funded through the water pollution control linked deposit program, in consultation with the commissioner of agriculture and markets, the extent to which the project will reduce, abate, control, or prevent non-point source pollution originating from agricultural sources and/or propose to implement best management practices, as identified in section three of the soil and water conservation districts law; and

e. For residential and small business on-site wastewater treatment system projects funded through the water pollution control linked deposit program, in consultation with the department of state, the extent to which the project will prevent an increase in nutrients in water bodies or the extent to which the project will enhance source water or watershed protection.

3. a. The corporation is authorized to promulgate regulations, developed in consultation with the commissioner and the director of the division of the budget, for the purpose of carrying out its responsibilities under this section, including establishing criteria and standards for determining the amount of financial assistance to a municipality for an eligible project. To the extent financial assistance to a municipality for an eligible project is provided as a loan from the proceeds of bonds or notes of the corporation, the amount of an allocation applicable to the portion of such eligible project financed with such loan shall be, subject to such maximum financial limitations as may otherwise be necessary and prescribed by the commissioner and the director of the division of the budget, thirty-three and one-third percent of the principal amount of such loan outstanding at any time for such eligible project, to the extent reasonably practicable, and subject to such deviation as may be necessary, in connection with the administration and investment of moneys in the fund, unless allocations in differing amounts are necessary to preclude a determination by the commissioner or the corporation pursuant to paragraph e of subdivision eight of this section or unless an allocation in a differing amount is required for an innovative technology demonstration project; provided, however, that in the case of any municipality which has, during the period commencing on June first, nineteen hundred ninety-two and ending on September thirtieth, two thousand twenty-one, (i) submitted an application for financial assistance in the form of such a loan for an eligible project, which application has been accepted by the corporation, (ii) closed on such loan, and (iii) commenced construction of such eligible project, the allocation applicable to the portion of such project financed with such loan shall be, subject to maximum financial limitations as may otherwise be necessary and prescribed by the commissioner and the director of the division of the budget, fifty percent of the principal balance outstanding on such loan at any time for such eligible project, to the extent reasonably practicable, and subject to such deviation as may be necessary, in connection with the

administration and investment of moneys in the fund, unless allocations in differing amounts are necessary to preclude a determination by the commissioner or the corporation pursuant to paragraph e of subdivision eight of this section or unless an allocation in a differing amount is required for an innovative technology demonstration project.

b. The corporation may enter into a project financing agreement with up to three municipalities which provides for up to one hundred percent subsidy of the interest on the amount of principal not to exceed three million dollars for the construction of innovative technology demonstration projects which shall be waste water treatment facilities which utilize innovative technology approved by the commissioner as defined in regulations promulgated by the United States environmental protection agency in accordance with the Federal Water Pollution Control Act. The commissioner shall prepare criteria for selection of eligible projects pursuant to this paragraph including, but not limited to, the use of innovative technology which has been proven reasonably effective on at least a demonstration model basis.

c. The department is authorized to promulgate regulations, developed in consultation with the director of the division of the budget, for the purpose of carrying out its responsibilities under this section.

4. The corporation may enter into project financing agreements with municipalities providing for the construction and financing of eligible projects. The corporation shall prepare each project financing agreement, which shall include but is not limited to the following provisions:

a. A description of the eligible project;

b. An estimate of the reasonable cost of the eligible project and a projected cash flow schedule for meeting that cost;

c. A schedule for construction of the eligible project;

d. A right of the corporation to approve all contracts for services and construction funded pursuant to a project financing agreement, and to inspect and review the construction of eligible projects;

e. Notwithstanding the provisions of any other law, general, special or local, inconsistent with this section, a right of the corporation to invest proceeds of the corporation's bonds or notes, including proceeds of bonds or notes of the municipality, as provided in subdivision four of section twelve hundred eighty-four and subdivision six of section twelve hundred eighty-five-j of the public authorities law.

Such right shall include the right to invest such monies together with any other monies held by the corporation pursuant to the provisions of section twelve hundred eighty-five-j of the public authorities law;

f. Remedies in the event of a municipality's failure to comply with the terms of a project financing agreement;

g. An agreement by the corporation to:

(i) lend to the municipality for the construction of an eligible project a specified amount from the proceeds of the corporation's bonds or notes, not to exceed the estimated reasonable cost of construction of the eligible project established in the project financing agreement or any loan agreement, subject to the ability of the corporation to provide such financing, including but not limited to the approval of the corporation's board and any other approvals required by state or federal law;

(ii) use all reasonable efforts to issue its bonds or notes in an amount sufficient to finance the estimated reasonable cost of the eligible project, including but not limited to costs of issuance, credit support fees, if any, trustees fees, interest during construction, and such reserve funds, if any, as may be necessary to secure such bonds or

notes;

(iii) in the alternative, provide financial assistance to the municipality for the construction of an eligible project in a specified amount from the proceeds of any federal capitalization grant, award, assistance, or any state moneys appropriated to or otherwise transferred into the fund, not to exceed the estimated reasonable cost of construction of the eligible project established in the project financing agreement or any loan agreement, as determined by the corporation or as directed by the commissioner pursuant to subdivision eight of this section or subdivision four of section twelve hundred eighty-five-j of the public authorities law;

(iv) make reimbursements for the administrative and management costs of the department and the corporation in accordance with subdivisions five and seven of section twelve hundred eighty-five-j of the public authorities law;

(v) provide to the municipality, for any loan made from the proceeds of the corporation's bonds or notes, an interest rate subsidy allocation for the eligible project in accordance with section twelve hundred eighty-five-j of the public authorities law and this section;

(vi) administer any federal rebate requirement in connection with obligations of the corporation and of any municipality issued in accordance with a project financing or loan agreement;

h. An agreement by the municipality to:

(i) proceed expeditiously with and complete the eligible project in accordance with plans approved pursuant to titles seven and eight of this article;

(ii) commence operation of the eligible project on completion of the project, and not discontinue operation of or dispose of the eligible project as long as a loan to the municipality for such project remains outstanding, without approval of the commissioner; provided, however, that the commissioner shall not approve disposition of the eligible project without the concurrent approvals, as appropriate, of the corporation and the state comptroller. None of the foregoing shall limit the commissioner's authority to terminate or impose conditions upon the operation of an eligible project pursuant to the provisions of this chapter and any implementing regulations thereto;

(iii) operate and maintain the eligible project in accordance with applicable requirements of federal and state law;

(iv) establish and maintain project accounts in accordance with the project financing agreement and generally accepted government accounting standards;

(v) establish a dedicated source of revenue (which may include a general obligation of the municipality) providing for:

(a) operation and maintenance costs of the eligible project and equipment renewal and replacement; and

(b) loan repayment regardless of whether the eligible project is in operation;

(vi) permit any reviews or audits and provide assistance determined to be reasonable and necessary by the department or the corporation;

(vii) retain public ownership of the eligible project; and

(viii) notwithstanding the provisions of any other law, general, special or local, inconsistent with this section, delegate to the corporation the authority to invest proceeds of bonds or notes issued by the corporation or the municipality on behalf of the municipality.

i. An agreement by the corporation to certify, subject to the availability of funds, payment upon submission of a satisfactory request for disbursement of loan proceeds by a municipality, of an amount

equivalent to actual construction costs incurred on or before the date of submission of the request for disbursement of loan proceeds, plus any projected construction costs which will be incurred within ninety days from the date of submission of the request for disbursement of loan proceeds, less any funds already advanced;

j. An agreement in regard to financial assistance provided pursuant to paragraph (b) of subdivision four of section twelve hundred eighty-five-j of the public authorities law, to waive programmatic requirements other than those mandated by federal law and subparagraph (i) of paragraph d of subdivision one of this section, provided that the project was in compliance with the goals and requirements of the Federal Water Pollution Control Act, prior to July first, nineteen hundred eighty-eight, or was subject to an administrative or judicial order requiring compliance with the goals and requirements of the Federal Water Pollution Control Act prior to September thirtieth, nineteen hundred eighty-nine; and

k. Such other agreements or covenants as may be required in connection with the issuance by the corporation of its bonds or notes.

5. For the purpose of implementing the program set forth in this section and section twelve hundred eighty-five-j of the public authorities law, and ensuring compliance with the requirements of Title VI of the Federal Water Pollution Control Act, the corporation shall ensure compliance with each project financing agreement by:

a. retaining the right to inspect and review work on each eligible project in progress and upon completion, and determining whether such work was undertaken and completed in compliance with all relevant plans and the terms of such project financing agreement;

b. retaining the right to certify or refuse to certify advances and payments to a municipality pursuant to a project financing agreement or any loan agreement executed subsequent thereto to finance an eligible project;

c. retaining the right to certify or refuse to certify advances and payments to a municipality pursuant to a project financing agreement and any loan agreement executed subsequent thereto to finance an eligible project based upon the determinations of any review or audit;

d. establishing remedies if work on an eligible project has not been completed in accordance with all relevant plans and the terms of such project financing agreement due to factors within the municipality's control; and

e. requiring a municipality to maintain project accounts with respect to any eligible project.

Nothing herein shall be construed to affect or diminish the general authority of the department to inspect and review the work on any project financed pursuant to this section, or to inspect the records relating to such project, for the purpose of determining compliance with any other provisions of this chapter.

6. In the event the work completed pursuant to a project financing agreement or loan agreement is deemed not in compliance with such agreements, the corporation shall expeditiously notify the municipality of such non-compliance and indicate the reasons for such determination.

7. For the purpose of implementing the program set forth in this section and section twelve hundred eighty-five-j of the public authorities law, and ensuring compliance with the requirements of Title VI of the Federal Water Pollution Control Act, the department shall:

a. Enter into any agreement between the state of New York and the administrator of the United States environmental protection agency and take all other actions necessary to comply with the requirements of

Title VI of the Federal Water Pollution Control Act and state law, including but not limited to:

(i) determining a reasonable schedule for financing and construction of eligible projects;

(ii) directing the establishment of systems of records or accounts and subaccounts within the water pollution control revolving fund as the department deems necessary or desirable, and approving or disapproving the establishment of such record systems or accounts and subaccounts as the corporation requests for the operation of the water pollution control revolving loan fund;

(iii) determining the accounts or subaccounts within the water pollution control revolving fund which will be used as a source of funding for each eligible project subject to the limitations of subdivision six of this section; and

(iv) approving each project for qualification as an eligible project.

b. Arrange in consultation with the corporation for independently conducted reviews and audits on at least an annual basis necessary to carry out the objectives of the fund.

c. Submit a copy of the draft intended use plan to the governor, the director of the division of the budget, the chairman of the senate finance committee and the chairman of the assembly ways and means committee on or before October thirty-first, nineteen hundred eighty-nine and annually on or before such date thereafter and submit a copy of the final intended use plan to such persons upon its approval by the administrator of the United States environmental protection agency.

8. The corporation may or, if so directed by the commissioner, the corporation shall provide financial assistance to municipalities as a loan pursuant to paragraph (a) of subdivision four of section twelve hundred eighty-five-j of the public authorities law from any available moneys in the fund other than the proceeds of the corporation's bonds or notes or moneys needed to comply with subdivision five of section twelve hundred eighty-five-j of the public authorities law if and to the extent any of the following conditions are met:

a. The corporation determines that it is unable to, or that it is impracticable to, finance all or a portion of the costs of an eligible project from the proceeds of bonds or notes that are special obligations of the corporation; or

b. The total cost of the eligible project and related segments does not exceed four million dollars where such project and related segments service a municipality with a population of three thousand five hundred or less; or

c. The commissioner or the corporation determines that failure to do so would jeopardize the receipt or maintenance of federal capitalization grant moneys, awards or assistance; or

d. A determination is made by the corporation that the issuance of and use of the proceeds of the corporation's bonds to provide financial assistance to municipalities would cause the loss of the tax-exempt status of any bonds or other obligations of New York state, all or a portion of the proceeds of which are appropriated or otherwise transferred into the fund; or

e. Federal capitalization grants are provided in the form of a letter of credit or draws under capitalization grant agreements and the commissioner or the corporation determines, consistent with the purposes of the fund, that providing financial assistance from the proceeds of corporation bonds or notes would delay receipt of moneys from the federal government under the Federal Water Pollution Control Act.

The interest rate charged on any loan made by the corporation pursuant

to this subdivision shall be no more than two-thirds of the market rate of interest otherwise applicable thereto, provided, however, that in the case of any municipality which has, during the period commencing on June first, nineteen hundred ninety-two and ending on September thirtieth, two thousand twenty-one, (i) submitted an application for financial assistance in the form of a loan from the corporation pursuant to this subdivision, for an eligible project, which application has been accepted by the corporation, (ii) closed on such loan, and (iii) commenced construction of such eligible project, the interest rate charged on such loan shall be no more than one-half of the market rate otherwise applicable thereto.

9. The contracts for the construction of eligible projects constructed and financed pursuant to a project financing agreement shall be subject to the requirements and provisions of article 15-A of the executive law and, for such purposes, any such contract shall be considered a "state contract" and the department shall be the "contracting agency" for each such contract.

10. Notwithstanding the provisions of any other law, general, special or local, the following determinations shall be made by the corporation in its sole and absolute discretion:

(a) In connection with any application for financial assistance from the fund in the form of a loan from the proceeds of bonds or notes of the corporation, the determination as to whether the municipality receiving such loan has qualified for an allocation of fifty percent of the principal amount of such loan outstanding at any time, pursuant to subdivision three of this section; and

(b) In connection with any application for financial assistance from the fund in the form of a loan from the corporation pursuant to subdivision eight of this section, where the municipality receiving such loan is not qualified for an interest rate of zero percent, the determination as to whether such municipality has qualified for an interest rate of one-half of the market rate otherwise applicable thereto, pursuant to subdivision eight of this section.