



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

# Potential Revisions to:

- **Chapter 173-98 WAC (CWSRF)**
- **Chapter 173-95A WAC (Centennial)**



# Abbreviations and Acronyms Used on Slides

<b>AS = Additional Subsidization</b>	<b>MHI = Median Household Income</b>
<b>CEA = Cost and Effectiveness Analysis</b>	<b>NPS = Nonpoint Source</b>
<b>Centennial = Centennial Clean Water Fund</b>	<b>OSS = Onsite Sewage System</b>
<b>CWA = Clean Water Act</b>	<b>PCI = Per Capita Income</b>
<b>CWSRF = Clean Water State Revolving Fund</b>	<b>PWAA = Public Works Assistance Account</b>
<b>DEP = Designated Equivalency Projects</b>	<b>PWB = Public Works Board</b>
<b>DOH = Department of Health</b>	<b>SAO = State Auditors Office</b>
<b>DWSRF = Drinking Water State Revolving Fund</b>	<b>SERP = State Environmental Review Process</b>
<b>EAGL = Ecology Administration of Grants and Loans</b>	<b>SFAP = Stormwater Financial Assistance Program</b>
<b>FAC = Financial Assistance Council</b>	<b>Step 1 = Planning Project</b>
<b>FCA = Financial Capability Assessment</b>	<b>Step 2 = Design Project</b>
<b>FP = Forgivable Principal</b>	<b>Step 3 = Construction Project</b>
<b>Funding List/IUP = Funding Offer List and Intended Use Plan</b>	<b>Step 4 = Design and Construction Project</b>
<b>GAAP = Generally Accepted Accounting Principals</b>	<b>SWF = Stormwater Facility</b>
<b>GASB = Governmental Accounting Standards Board</b>	<b>TBD = To Be Determined</b>
<b>GC/CM = General Contractor/Construction Manager</b>	<b>TIB = Transportation Improvements Board</b>
<b>GMA = Growth Management Act</b>	<b>WAC 173-95A = Centennial Rule</b>
<b>GPR = Green Project Reserve</b>	<b>WAC 173-98 = CWSRF Rule</b>
<b>I/O = Initiation of Operations</b>	<b>WQ = Water Quality</b>
<b>IGEA – Investment Grade Efficiency Audit</b>	<b>WSECU = Washington State Employee’s Credit Union</b>
<b>IUP = Intended Use Plan</b>	<b>WWF = Wastewater Facility</b>



# “Housekeeping”

## ■ Examples:

- Some minor wording errors in both rules
- Wrong name of CWSRF statute in WAC 173-98-010
- Wrong CWA references in WAC 173-98-010, -030(1), and -040(8)
- Wrong application references in WAC 173-98-200(3) and WAC 173-95A-300(3)

## ■ Decisions:

- **Make changes as needed**



# Accounting Practices

## ■ Currently:

- CWA requires use of GAAP as issued by GASB
  - Actually required by federal regulation since 1988, including reporting of infrastructure assets (required by GASB Statement 34 since 1999)
- WAC 173-98-910(1) says, *“Recipients must maintain accounting records in accordance with RCW 43.09.200 Local government accounting—Uniform system of accounting.”*
  - GAAP requires accrual-basis accounting; state standards allow cash-basis accounting

## ■ Issues:

- Rule doesn't include GAAP standards

## ■ Suggestions:

- Change to, *“Recipients must maintain accurate records and accounts for the project in accordance with Generally Accepted Accounting Principles as issued by the Governmental Accounting Standards Board, including standards related to the reporting of infrastructure assets, or in accordance with the ~~equivalent~~ state standards in Chapter 43.09.200 RCW Local Government Accounting – Uniform System of Accounting.”*

## ■ Decisions:

- As requested during the 07/21/16 FAC meeting, Ecology, EPA, and the SAO discussed; GAAP or the state standards are acceptable, but delete the word, *“equivalent”* from the original suggested language as shown above



# Additional Subsidization

## ■ Currently:

- WAC 173-98-500(2)(a) says 9% of each Cap Grant is set-aside for AS

## ■ Issues:

- 9% figure is wrong

## ■ Suggestions:

- Correct erroneous % or delete specifics
- Delete subsection entirely

- AS may not be required in any given year, and it won't be allowed when the Cap Grants total <\$1B nationally; plus, the amounts and percentages can be overridden by appropriation
- Describe AS requirements in Funding List/IUP

## ■ Decisions:

- **Keep in rule but delete specifics**



# Bid Overruns and Change Orders

## ■ Currently:

- WAC 173-98-520(5)(a) and WAC 173-95A-520 (4)(a) limit bid overruns to 10% of “*engineer’s original estimate*”
- WAC 173-98-520(6)(a) and WAC 173-95A-520 (5)(a) limit change orders to 5% of construction contract

## ■ Issues:

- Limits funding we can provide even if available and legitimately needed

## ■ Suggestions:

- Remove caps and base on need and availability of funds
- If language remains, specify bid overruns are based on bid documents, not engineer’s estimate in application
- Revise caps
- Keep current approach; leave it to applicants/recipients to address via “contingency clauses”

## ■ Decisions:

- Clarify that the “*engineer’s original estimate*” is based on the bid documents
- Keep 10% Bid Overrun allowance
- Increase Change Order allowance to 10% and add flexibility to allow funding for exceedances on a case-by-case basis



# Capacity for Growth

## ■ Currently:

- WAC 173-98-100(4) limits loans to, “...up to twenty years capacity for water pollution control facilities...”

## ■ Issues:

- No need to limit loans to 20 years capacity

## ■ Suggestions:

- Delete limit entirely
- Change limit to 30 years capacity

## ■ Decisions:

- Delete limit; however, include clarification re statutory limitation of 110% of existing capacity



# Cost and Effectiveness Analysis

## ■ Currently:

- CWA requires a CEA for all projects receiving CWSRF funding; includes choosing the alternative that, to the “*maximum extent practical*”, maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation
- WAC 173-98-730 describes the CEA requirements; they apply to all facility projects
  - Handled under SERP; required for Step 2, 3, and 4 facility projects

## ■ Issues:

- Section only applies to facility projects
- Section doesn't include water and energy efficiency language

## ■ Suggestions:

- Revise section to state the CEA is required for all projects and must include water and energy efficiency
- Delete section entirely, as we don't have separate sections in the rule for all the other federal requirements

## ■ Decisions:

- **Delete section**



# Design-Build vs. General Contractor/Construction Manager

## ■ Currently:

- WAC 173-98-600 defines requirements for projects using “*Design-Build*” and “*Design-Build-Operate*”
  - Statutory requirements in RCW 39.10.300-330
- GC/CM is similar, but significantly different
  - Statutory requirements in RCW 39.10.340-410

## ■ Issues:

- Section doesn't apply to GC/CM

## ■ Suggestions:

- Clarify that section does not apply to GC/CM
- Add new section for GC/CM requirements

## ■ Decisions:

- **As requested during the 07/21/16 FAC meeting, Ecology reviewed Design-Build section and compared it to Design-Build statutory requirements; the rule contains items beyond the statute and, thus, is needed; Ecology will draft a new section for GC/CM**



# Emergency Funding

## ■ Currently:

- No process to provide “emergency” funding

## ■ Issues:

- Significant water quality problems can result from drought, floods, fires, volcanic eruptions, and earthquakes, but we can only provide assistance via our standard process

## ■ Suggestions:

- Add new section for an Emergency Funding Process

## ■ Decisions:

- Add new section; use DOH’s DWSRF as a guide



# Funding Allocation Process 1

## ■ Currently:

- Funding allocation is based on available funds, project category, funding source requirements, and rating/ranking

## ■ Issues:

- The current process can result in few, if any, projects in a particular region receiving funding
  - Example: All offered SFY17 SFAP funding went to ERO projects

## ■ Suggestions:

- Include Ecology region in the funding allocation process

## ■ Decisions:

- **Keep current process**



# Funding Allocation Process 2

## ■ Currently:

- WAC 173-98-510 limits offering CWSRF funding to no more than 50% of the GPR, Facility, and Activity categories and 20% of the Preconstruction category per applicant

## ■ Issues:

- It's possible for 2 projects or even 1 combined-funded project to take all the available funds under the GPR, Facility, and Activity categories

## ■ Suggestions:

- Add language ensuring that at least several projects will obtain funding offers in each category

## ■ Decisions:

- **Keep current process, as it allows Ecology to fund multiple projects even in cases where all the funding is dedicated to a few projects**



# Funding Applicant Workshops

## ■ Currently:

- WAC 173-98-210(2)(b) and WAC 173-95A-310(2)(b) say, “*Conduct at least one application workshop in each of ecology's four regions.*”

## ■ Issues:

- No flexibility to reduce the number or replace with web-based workshops if desired

## ■ Suggestions:

- Revise to say “*Conduct application workshops*” & allow workshops to be onsite or web-based
  - Make decisions based on recipient input

## ■ Decisions:

- **Add flexibility to allow a mixture of in-person and web-based workshops, providing they are accessible statewide**



# Green Project Reserve

## ■ Currently:

- WAC 173-98-500(1)(a) says 25% of Cap Grant is set-aside for GPR projects
- WAC 173-98-500(1)(b)-(e) says we allocate funds first to GPR category, subtract it from other categories, then allocate to other categories

## ■ Issues:

- 25% figure is wrong
- Allocation language is wrong

## ■ Suggestions:

- Correct erroneous % or delete specifics
- Delete erroneous allocation language
- Delete GPR references from section entirely
  - GPR may not be required by future Cap Grants, and it won't be required when grants are no longer awarded
  - Describe any requirements in Funding List/IUP

## ■ Decisions:

- **Keep in rule but delete specifics and delete allocation language**



# Hardship—Criteria

## ■ Currently:

- WAC 173-98-300 and WAC 173-95A-400 limit consideration for hardship funding to projects where the population paying for the project is  $\leq 25,000$

## ■ Issues:

- Large communities may have low MHI and high wastewater fees

## ■ Suggestions:

- Eliminate population cap
- Maintain cap but adjust annually
- Base on the % increase in sewer rates resulting from the project
- Use PCI rather than MHI
  - Same information source but less variability

## ■ Decisions:

- Keep population cap, but add an annual increase linked to the state population increase
- Continue using MHI
- As requested during the 07/21/16 FAC meeting, Ecology consulted with DOH re their “Affordability Index”; Ecology’s and DOH’s approaches are generally consistent



# Hardship—Maximum Subsidy

## ■ Currently:

- WAC 173-98-520(3)(b) and WAC 173-95A-400(5)-(7), -400(10) Figure 2, and -520(3) cap the combined grant/FP loan for WWF construction hardship projects at \$5M

## ■ Issues:

- \$5M cap today is worth less than when limit was established
- \$5M cap is too high, as it depletes what's available for NPS projects

## ■ Suggestions:

- Increase cap and adjust annually
- Decrease cap so more is available for NPS projects

## ■ Decisions:

- **Keep current cap and set-asides (1/3 for WWF; 1/3 for NPS; 1/3 competitive)**



# Land Acquisition 1

## ■ Currently:

- CWA allows CWSRF loans to acquire land for siting a facility
- WAC 173-98-100(19) allows CWSRF loans to acquire land for land treatment and “wetland habitat preservation”
- WAC 173-95A-110(3) allows Centennial loans to acquire land for land treatment, prevention of water pollution, siting a facility, wetland habitat preservation
- Funding Guidelines broaden definition of “wetland habitat preservation” to include riparian area preservation and drinking water source protection

## ■ Issues:

- No option for CWSRF loans to acquire land for siting facilities
- No option for Centennial grants to acquire land for hardship projects
- Inconsistency between rules and guidelines

## ■ Suggestions:

- Allow CWSRF loans to acquire land needed for siting facilities
- Allow Centennial grants in hardship communities to acquire land for land treatment and siting facilities
- Make language in rules and guidelines as consistent as possible

## ■ Decisions:

- **Allow CWSRF loans for acquiring land to site facilities**
- **Don't allow Centennial grants to acquire land for facilities**
- **Make language in rules and guidelines consistent**



# Land Acquisition 2

## ■ Currently:

- WAC 173-95A-110(3) allows Centennial loans to acquire land for “*wetland habitat preservation*”; the Funding Guidelines broaden definition to include “*riparian area preservation*” and “*drinking water source protection*”

## ■ Issues:

- No option for Centennial grants to acquire land for wetland habitat preservation, riparian area preservation, or drinking water source protection

## ■ Suggestions:

- Allow Centennial grants to acquire land for: (a) wetland habitat preservation, (b) riparian area preservation, and (c) drinking water source protection

## ■ Decisions:

- **Don't allow grants for land acquisition unless there's excess funding available**



# Loan Interest Accrual

## ■ Currently:

- **WAC 173-98-400(1) requires interest accrual on loan funds as they are disbursed**
  - This, “deferred interest” is added to the principal at close-out

## ■ Issues:

- **Some recipients wait until near completion to submit payment requests to avoid accruing deferred interest**
  - Impacts our cash-flow modelling

## ■ Suggestions:

- **Charge interest on funds that are “committed” (like issuing a bond)**
  - Could encourage drawing funds more rapidly & closing-out projects sooner
- **Enforce/strengthen agreement condition requiring submittal of payment requests regularly**
- **Consider increasing interest rates for slow progress and decreasing them for fast progress**

## ■ Decisions:

- **Keep current approach of charging interest on disbursed amount**
- **Continue discussion of interest rates at the 11/10/16 FAC meeting**



# Loan Interest Rates Flexibility

## ■ Currently:

- WAC 173-98-400(2) and WAC 173-95A-200 establish criteria for standard rates
- WAC 173-98-300(5), WAC 173-98-310(2), and WAC 173-95A-400(7) establish criteria for hardship rates
- WAC 173-98-400(4) describes process for reducing standard rates
  - Reductions apply across the board

## ■ Issues:

- **No flexibility**
  - Example: Spokane returned \$30M in SFY15 and didn't pursue many more millions in funding because they were able to get a nearly equal bond rate with no federal conditions attached
  - Example: PWB previously reduced their rates just before making funding offers because bond rates had decreased
  - Example: OR and OH reduce rates for NPS sponsorship projects
  - Example: DEPs must do extra work in order to meet specific federal requirements; this costs more

## ■ Suggestions:

- Allow rate reductions on a case-by-case basis
- Allow option to adjust rates downward just prior to publishing the Funding List/IUP
- Lower rates for a facility project if recipient also sponsors a NPS project
- Implement "floating rates" (e.g., 0.5 point below market) that allow a recipient to lock-in a rate when they are ready to sign
  - Would allow recipients a guarantee interest rate will be less than market rate, thereby making CWSRF loans more desirable than bonds—regardless of the time of signing
- Reduce rates for NPS projects

## ■ Decisions:

- **Add more flexibility**
- **Continue discussion of interest rates at the 11/10/16 FAC meeting**



# Loan Term of 30 Years

## ■ Currently:

- CWA and Chapter 90.50A RCW allow loans “...at terms not to exceed the lesser of 30 years and the projected useful life (as determined by the State) of the project to be financed...”

## ■ Issues:

- WAC 173-98-300(5), -310(3)-(4), and -400(3) and WAC 173-95A-200 and -400(7) limit to 20 years

## ■ Suggestions:

- Offer to everyone
- Only offer to a certain % of agreements
- Only offer to “hardship” communities
- Base interest rate on the “Revenue Bond Index”
  - 25 revenue bonds that mature in 30 years; rates ~ half a percentage point higher than 20-year loans
  - Make rates even higher in order to make available to more recipients

## ■ Decisions:

- Continue discussion of 30-year loan terms at the 11/10/16 FAC meeting



# Onsite Sewage Systems Repair and Replacement Programs

## ■ Currently:

- WAC 173-98-310(2) describes how final loan blended interest rate is calculated
- WAC 173-98-310(4) Figure 4 limits “*small commercial enterprises*” to annual gross revenue of \$100K

## ■ Issues:

- Final loan blended interest rate calculation description is wrong
- Annual gross revenue cap may be too small

## ■ Suggestions:

- Clarify final loan blended interest rate calculation
- Increase cap to “*annual net revenue of \$100K*” and adjust annually
- Increase cap to “*annual gross revenue of \$200K*” and adjust annually
- Delete the cap entirely; just base definition on flow

## ■ Decisions:

- Clarify final loan blended interest rate calculation
- Delete income from “*small commercial enterprises*” definition and base solely on having a flow of <3,500 gallons/day



# Perpetuity Definition

## ■ Currently:

- WAC 173-98-030(56) defines as, “*Perpetuity means the point at which the revolving fund is earning at least fifty percent of the market rate for tax-exempt municipal bonds on its loan portfolio.*”

## ■ Issues:

- Interest rates are always fluctuating, so while we may meet the definition today, we may not tomorrow, next week/month/year
- Hardship interest rates—which can be as low as 0%—impact fund
- FP loans also impact fund

## ■ Suggestions:

- Redefine to not link with interest rates
- Eliminate definition, as it’s not defined by the CWA or EPA

## ■ Decisions:

- **Redefine to not link with interest rates; examine other definitions (e.g., other states, WSECU)**



# Preconstruction in Hardship Communities

## ■ Currently:

- WAC 173-98-520(2)(b) limits FP loans for preconstruction to 50%; remainder is standard loan
- WAC 173-95A-110(2)(a) and (b) only allow Centennial loans for preconstruction

## ■ Issues:

- Even a 50% standard loan can have a big impact on ratepayers in small, low income communities
- No allowance for Centennial grants for preconstruction

## ■ Suggestions:

- Increase allowable % of FP loan for preconstruction in hardship communities
- Allow 0% rates for preconstruction in hardship communities
- Allow Centennial grants for preconstruction in hardship communities

## ■ Decisions:

- **Allow Centennial grants for preconstruction in hardship communities**
- **Keep 50% FP loan (or grant) to 50% standard loan ratio**



# Prior Authorization

## ■ Currently:

- WAC 173-98-800(1) and WAC 173-95A-700(1) describe the process for obtaining “prior authorization” to incur costs

## ■ Issues:

- Section is obsolete and not needed
  - Addressed for CWSRF loans if we’re providing interim refinance
  - We will reimburse for costs incurred after the Final List/IUP is published (earlier, in some cases) without the process described for Centennial grants

## ■ Suggestions:

- Delete most of section

## ■ Decisions:

- Delete obsolete and unnecessary portions of section



# Public Bodies Definition

## ■ Currently:

- WAC 173-98-030(63) and WAC 173-95A-020(53) define as *“Public body means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, Indian tribes recognized by the federal government, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.”*

## ■ Issues:

- Rules, not statutes, prohibit providing funding to other state agencies, departments, or offices

## ■ Suggestions:

- Allow funding for other state agencies, departments, & offices

## ■ Decisions:

- **Keep current definition**



# Publicly-owned Industrial Facilities

## ■ Currently:

- WAC 173-98-110 lists as ineligible funding for “6) Commercial, institutional or industrial wastewater pollution control activities or facilities or portions of those facilities that are solely intended to control, transport, treat, dispose, or otherwise manage wastewater; 7) Commercial, institutional or industrial monitoring equipment for sampling and analysis of discharges from municipal water pollution control facilities; 8) Commercial, institutional or industrial wastewater pretreatment”
- WAC 173-95A-120 lists as ineligible funding for, “3) Commercial, institutional or industrial wastewater pretreatment; 6) Facilities intended solely to control, transport, treat, dispose, or otherwise manage commercial, institutional, or industrial wastewater; 14) Monitoring equipment for sampling and analysis of commercial, institutional, or industrial discharges”

## ■ Issues:

- Rules, not statutes, prohibit funding for publicly-owned solely industrial facilities

## ■ Suggestions:

- Allow funding for publicly-owned solely industrial facilities

## ■ Decisions:

- **Don't expand eligibility to publicly-owned solely industrial facilities**



# Repayment Dates

## ■ Currently:

- WAC 173-98-430(2) requires loan repayments begin 1 year after project completion or I/O date, whichever occurs first

## ■ Issues:

- For recipients with multiple loans (e.g., King County), tracking becomes very difficult because the payment dates vary

## ■ Suggestions:

- Standardize repayment dates—e.g., July 31 & January 31—regardless of the project completion or I/O date
  - Would simplify tracking for recipients with multiple loans
- Establish an amortization schedule to accomplish this providing the 1<sup>st</sup> payment occurs no later than 1 year after the project completion or I/O date

## ■ Decisions:

- **Keep current approach, but allow recipients to select specific repayment dates during the final amendment process providing the first payment is no more than 1 year after project completion or the I/O date and providing that Ecology's Fiscal Office confirms that it is feasible**



# Repayment Period

## ■ Currently:

- WAC 173-98-430(2) requires loan repayments to begin 1 year after project completion or I/O, whichever is first

## ■ Issues:

- Pace of money in/out of fund could be much faster if the beginning of repayment was tied to the first disbursement or a specific project activity instead

## ■ Suggestions:

- Begin repayment based on the 1<sup>st</sup> disbursement—e.g., 1 year after 1<sup>st</sup> disbursement—but delay repayment until 1 year after project completion or I/O for hardship communities

## ■ Decisions:

- **Keep current approach**



# Reserve Account

## ■ Currently:

- WAC 173-98-450 requires “*revenue obligation secured loans*” to build a reserve account of 1 year of repayments within 1<sup>st</sup> 5 years of repayment

## ■ Issues:

- This may be useful for some communities, but it’s a burden on others who don’t have repayment issues and could use the funds for other projects

## ■ Suggestions:

- Eliminate requirement; only impose if the FCA or other information suggests it’s needed
- If removed, consider making removal retroactive

## ■ Decisions:

- **Eliminate requirement and impose only if needed**
- **Explore the feasibility of removing the requirement retroactively**



# Step 4 Projects—Maximum Amount

## ■ Currently:

- WAC 173-98-520(3)(c) and -530(4) and WAC 173-95A-540(3) cap the total project cost for Step 4 projects at \$5M

## ■ Issues:

- \$5M today is worth less than when limit was established

## ■ Suggestions:

- Increase cap and adjust annually

## ■ Decisions:

- Increase current cap per the *Engineering News-Record* “Building Cost Index”, but do not adjust it annually



# Step Process

## ■ Currently:

- WAC 173-98-530 and WAC 173-95A-540 require the “step process” for facility projects

## ■ Issues:

- Very little flexibility
- Technically applies to stormwater facilities, too, but not being enforced
- SERP may be more meaningful during design step rather than planning step

## ■ Suggestions:

- Build in more flexibility
  - Help avoid situations such as when the PWAA was swept & applicants were required to seek Ecology funding but did not meet the prerequisites
- Allow SERP approval during Design
- Delete requirements for Ecology “approval” to apply, but establish a timeframe for approval
- Apply to SWFs, too, or specify it’s only for WWFs
- Delete section from WAC 173-95A because facilities can only apply for loans, not Centennial grants
- Consider TIB’s allowance to apply for multiple years of related projects at once
  - Knowing in advance about projects could help predict demand & cash flow modeling and provide some degree of funding certainty for applicants

## ■ Decisions:

- Add flexibility
- Clarify that it only applies to WWFs
- Allow SERP during Design
- Ecology will draft language for FAC review