§ 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; and

(f) includes consideration of county-wide or regional wastewater planning.

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, school 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; (v) compliance with state and federal law, rules and regulations; and (vi) the extent to which such projects reflect county-wide or regional wastewater planning;

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-seven, (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-seven, (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.