

Regulations of Connecticut State Agencies

TITLE 32. Commerce and Economic and Community Development

Agency

Department of Economic Development

Subject

Administration of and Eligibility for Dam Repair Loan Funds

Inclusive Sections

§§ 32-9bb-1—32-9bb-6

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Administration of and Eligibility for Dam Repair Loan Funds

Sec. 32-9bb-1. Definitions

“Commissioner” means the Commissioner of Economic Development or his Deputy.

“Department” means the Department of Economic Development.

“Authority” means the Connecticut Development Authority.

“Dams” means all dams, dikes, reservoirs and other similar structures, with their appurtenances, without exception and without further definition or enumeration herein, which, by breaking away or otherwise, might endanger life or property and which are subject to the provisions of Chapter 446j of the General Statutes.

“Borrower” means (1) an investor-owned water company which supplies water to at least twenty-five but less than ten thousand customers, (2) a municipally-owned water company, or (3) an owner of a privately owned dam which the commissioner of environmental protection has determined benefits the public, and which entity intends to repair a dam which is subject to the jurisdiction of the department of environmental protection under Chapter 446j of the General Statutes.

“Condition” means the absence of major problems, for good condition; the potential for failure is minimal for normal operations, but is great during a catastrophic flood, for fair condition; the potential for failure during normal operations or moderate floods is apparent, for poor condition, all as commonly used in acceptable engineering practice as approved by the commissioner of environmental protection.

“Investor-Owned Water Company” means an entity organized as a “for-profit” venture which is engaged in the business of supplying water and does supply water to at least twenty-five but less than ten thousand customers.

“Hazard Classification” has those meanings for high, significant and low as commonly used in acceptable engineering practice for the repairs and/or construction of dams as approved by the commissioner of environmental protection.

“Municipally-Owned Dams” means dams which are owned by any city, town, borough or specially chartered district, and which dams are subject to the jurisdiction of the department of environmental protection under Chapter 446j of the General Statutes.

“Privately-Owned Dams” means dams which are owned by any person, corporation, partnership, association or other entity, which the commissioner of environmental protection determines benefits the public, and which dams are subject to the jurisdiction of the department of environmental protection under Chapter 446j of the General Statutes.

“Repair Costs” include, but need not be limited to, fees and expenses of architects, engineers, attorneys, accountants and other professional consultants, and costs of preparing surveys, studies, site plans and specifications for such repair.

(Effective January 24, 1986)

Sec. 32-9bb-2. Eligibility

To be eligible for a loan:

(a) the Borrower must be:

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(1) an investor-owned water company which supplies water to at least twenty-five but less than ten thousand customers; or

(2) a municipally-owned water company; or

(3) the owner of a privately-owned dam which the commissioner of environmental protection has determined benefits the public;

(b) the loan funds can only be used for the purpose of repairing dams which are subject to the jurisdiction of the department of environmental protection under Chapter 446j of the General Statutes.

(c) the dam shall have been cited by the department of environmental protection as being in an unsafe condition or as not meeting standards for dams as determined by acceptable engineering practice and the dam owner(s) shall have been ordered to perform engineering investigations and to construct repairs by the department of environmental protection;

(d) the Borrower has not received nor is eligible to receive any other State funds or grants or any federal funds or grants for the repair of the dam;

(e) the Borrower must present evidence satisfactory to the Authority that the intended repairs will comply with all federal, state and local health and safety laws and regulations.

(Effective January 24, 1986)

Sec. 32-9bb-3. Loan application and agreement

(a) Application for a loan shall be submitted on loan application forms prescribed by the Authority. No application shall be considered unless the exhibits required by such forms are furnished. The borrower shall pay up to \$100.00 for the costs of processing the application for a loan under this program, if the Commissioner determines it is reasonable and necessary for the borrower to pay such costs.

(b) Loan applications shall be considered by the Authority on a quarterly basis, in the months of March, June, September and December, for those applications received by the Authority not later than the first day of the month preceding the respective month of each quarterly review. The total amount of all the loans approved by the Authority under this section shall not exceed \$500,000 for any quarter.

(c) Each loan application will be scored in accordance with the Department of Environmental Protection Priority Scoring System.

Those applications receiving the highest priority score shall be considered first for loans under this section.

(1) Priority Scoring System

<i>Category</i>	<i>Points</i>
<i>Hazard Classification</i>	
High	40
Significant	30
Low (Moderate-Low)	20
<i>Condition</i>	

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Good	1	
Fair	5	
Poor	15	
<i>Use</i>		
Recreation	2	
Fire Water	2	
Wildlife Management	2	
Industrial Process/Cooling	2	
Hydropower	2	
Flood Storage/Control	3	
Drinking Water	12	
<i>Access</i>		
	<i>Beach</i>	<i>Boat Launch</i>
Public	5	5
Private	2	2
Semi-Private	3	3
<i>Ownership</i>		
Profit Making		5
Non-profit Making		10

(2) In the event of a tie score, that application with the highest hazard and condition points would be given priority for processing and funding.

(d) Upon approval of an application by the Authority or, if the Authority so determines, by a Committee of the Authority consisting of the Chairman and either one other member of the Authority or its Executive Director, the Department and the borrower shall enter into a loan agreement which shall set forth the terms and conditions required by these regulations and other terms and conditions applicable to the particular loan, which may be established by the Authority.

(e) The loan agreement shall be executed on forms provided by the Authority, and all costs of closing shall be paid by the borrower.

(f) Each loan agreement shall be effective only upon execution by the Commissioner and the borrower, and approval by the Secretary of the Office of Policy and Management and the Attorney General.

(g) Such loan agreement shall provide, without limitation, that the Borrower agrees:

(1) That the funds provided will be used solely for the repair costs of the dam.

(2) To provide the Authority with such financial and other reports as it may require from time to time;

(3) To notify the Authority promptly of any material adverse change in the financial condition or business prospects of the borrower;

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(4) To represent and warrant that it has the power and authority to enter into the loan agreement and to incur the obligations therein provided for, and that all documents and agreements executed and delivered in connection with the loan will be valid and binding upon the borrower in accordance with their respective terms;

(5) To provide such security for the loan as the Authority may require pursuant to section 4 (a) of these regulations and to execute and deliver all documents in connection therewith.

(h) The borrower must demonstrate to the satisfaction of the Authority that it has sufficient revenues to pay the principal and interest on the loan and to complete the repair of the dam in accordance with plans and specifications approved by the department of environmental protection.

(i) If, upon examination of the application, supporting information and results of any investigation, the Authority rejects such application, then the loan may not be granted and the Authority shall cause the applicant to be notified that the application has been denied.

(Effective January 24, 1986)

Sec. 32-9bb-4. Loans

(a) The loan may be secured or unsecured as the Authority determines to be appropriate under the particular circumstances. If the loan is to be secured, the Authority may require the borrower to provide the Department as security any or all of the following: real property, accounts, chattel paper, documents, instruments, general intangibles, goods, equipment, inventory or other personal property, and may further require the borrower to have executed and delivered to the Department security agreements, financing statements, mortgages, pledges, assignments, subordinations, guarantees or other documents or evidence of security as and in the form required by the Authority.

(b) The term of a loan shall not exceed thirty (30) years from the date of the first disbursement.

(c) No loan shall exceed the lesser of \$150,000 or 75% of eligible repair costs.

(d) The loan shall be repaid on an amortized schedule of payments or upon such other method of payment of principal and interest as the Authority considers necessary and appropriate in the particular circumstances, but in no event shall the payments be scheduled to exceed thirty (30) years from the date of the first disbursement, as set forth in section 4 (b) of these regulations.

(e) Disbursement of the loan shall be made at the discretion of the Commissioner in accordance with the provisions of the loan agreement and the instructions of the Authority.

(Effective January 24, 1986)

Sec. 32-9bb-5. Note

(a) Each loan shall be evidenced by a promissory note which shall contain a provision permitting the borrower to prepay the loan in whole or in part upon any scheduled payment date.

(b) The promissory note shall provide for the payment of interest at a rate not to exceed

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one percent per annum above the interest paid by the State of Connecticut on the latest general obligation bonds issued prior to the date of approval of the loan.

(c) The promissory note may provide for the collection of a late charge, not to exceed two percent of any instalment more than fifteen days in arrears. Late charges shall be separately charged to and collected from the borrower.

(d) Any misrepresentation, breach of warranty or other breach of any agreement or covenant contained in the loan agreement, the promissory note, or other documents signed by the borrower in connection with such loan shall be considered a default under the promissory note.

(e) The promissory note shall contain a provision that the failure of the borrower to make a payment of any instalment of principal or interest due under the promissory note within thirty days from the due date shall constitute a default.

(f) The promissory note shall contain a provision that it shall be an event of default if the dam repairs, as proposed or as constructed, fail to comply with all state and local health safety, and/or environmental regulations, and in particular, those applicable to dam repairs.

(g) The promissory note shall provide that upon default, any and all sums owing by the borrower under the promissory note shall, at the sole discretion of the Commissioner, become immediately due and payable.

(h) The promissory note shall provide that upon default, interest on the promissory note shall automatically increase two percent per annum above the rate of the promissory note and such increased interest rate shall apply not only after default, but after any judgment rendered upon said promissory note.

(i) The promissory note shall provide for payment of attorneys' reasonable fees and legal costs in the event the borrower shall default in the payment of the note.

(j) The promissory note shall contain such other clauses and covenants as the Authority, in its discretion, may require.

(Effective January 24, 1986)

Sec. 32-9bb-6. Disbursement and use of proceeds

Disbursement of the loan proceeds shall be made at the discretion of the Commissioner, either before or after construction of the dam repairs are complete, in accordance with the provisions of the commitment and the instructions of the Authority.

(Effective January 24, 1986)