

DEPARTMENT OF ENVIRONMENTAL QUALITY

OFFICE OF ENVIRONMENTAL ASSISTANCE

**SMALL BUSINESS POLLUTION PREVENTION ASSISTANCE LOAN
FUND**

(By authority conferred on the director of the department of environmental quality by section 14514 of 1994 PA 451, MCL 324.14514, Executive Reorganization Order No. 1995-16, MCL 324.99903, Executive Reorganization Order No. 2009-31, MCL 324.99919, and Executive Reorganization Order No. 2011-1, MCL 324.99921.)

R 324.14501 Definitions.

Rule 1. As used in these rules:

(a) "Applicant" means a business that applies for a small business pollution prevention loan.

(b) "Department" means the department of environmental quality.

(c) "Director" means the director of the department or his or her designated representative.

(d) "Eligible pollution prevention project" means a pollution prevention project that meets the criteria in these rules.

(e) "Energy usage" means the use of nonrenewable resources to support business operations, including electricity, water, and natural gas.

(f) "Fixed asset" means a permanent asset that is not consumed or converted into cash or its equivalent during a 12-month period.

(g) "Fund," as defined in part 145 of 1994 PA 451, MCL 324.14513 et seq., means the small business pollution prevention assistance revolving loan fund.

(h) "Lender agreement" means a binding agreement between a lending institution and the department that sets forth the terms and conditions for a lending institution to make loans and otherwise participate in the small business pollution prevention loan program.

(i) "Lending institution" means a bank, out-of-state bank, or national bank, foreign bank branch, association, savings bank, or credit union organized under the laws of this state, another state, the District of Columbia, the United States, or a territory or protectorate of the United States that has entered into a lender agreement with the department.

(j) "Loan agreement" means a written contract or agreement between a lending institution and a loan recipient that describes the terms of the small business pollution prevention loan. (k) "Loan recipient" means a small business that has been approved for and issued a small business pollution prevention loan.

(l) "RETAP audit" means a pollution prevention assessment conducted by engineers, scientists, and other qualified professionals participating in the retired engineer technical assistance program established under part 145 of 1994 PA 451, MCL 324.14501 et seq.

(m) "Small business pollution prevention loan" means a low-interest loan to a small business to finance an eligible pollution prevention project as provided for under these rules and part 145 of 1994 PA 451, MCL 324.14513 et seq.

(n) "Small business pollution prevention loan program" means the program the department administers to provide small business pollution prevention loans under these rules.

(o) "Supplemental agreement" means a binding agreement between an applicant and the department that sets forth the terms and conditions for the applicant to receive funds and otherwise participate in the small business pollution prevention loan program.

(p) Terms used in these rules have the same meaning as those defined and used in part 145 of 1994 PA 451.

History: 1998-2000 AACS; 2013 AACS.

R 324.14502 Purpose.

Rule 2. The purpose of these rules is to establish requirements for participation in the Michigan small business pollution prevention loan program, including applicability, eligibility, binding agreements, obligations, and procedures.

History: 1998-2000 AACS.

R 324.14503 Applicant eligibility.

Rule 3. (1) An applicant for a small business pollution prevention loan must meet all of the following requirements:

(a) Qualify as a small business as defined in MCL 324.14501(j).

(b) Apply for a small business pollution prevention loan in coordination with a lending institution under these rules.

(c) Propose to utilize the small business pollution prevention loan to undertake an eligible pollution prevention project in Michigan.

(d) Commence the proposed pollution prevention project within 180 days of receipt of a loan.

(e) Not have received a loan as described in these rules within the prior 3-year period.

(2) To be eligible for a loan from the fund for a qualified agricultural energy production system, an applicant shall also meet requirements in MCL 324.14513(5).

History: 1998-2000 AACS; 2013 AACS.

R 324.14504 Eligible pollution prevention project.

Rule 4. (1) An eligible pollution prevention project shall directly result in the reduction or elimination of environmental waste generated, energy used or water, or hazards to public health associated with environmental waste at the small business and shall be 1 or more of the following:

(a) A pollution prevention recommendation made in a RETAP audit.

(b) A pollution prevention expenditure at the small business, including an expenditure for any of the following:

- (i) Equipment or technology modifications.
- (ii) Process or procedure modifications.
- (iii) Reformulation, reclamation, or redesign of products.
- (iv) Substitution of raw materials.
- (v) Improvements in housekeeping, maintenance, or inventory control.
- (vi) Pollution prevention training of employees.
- (vii) On-site energy conservation studies or specifications.
- (viii) On-site energy efficiency projects.
- (ix) On-site water conservation projects.
- (x) Qualified agricultural energy production systems.

(2) The following projects or expenditures are not eligible pollution prevention projects:

- (a) Costs incurred before the effective date of the loan agreement.
- (b) Refinancing pre-existing obligations or debt.
- (c) Financing building or construction costs that are not integral to the project.
- (d) Financing salaries, wages, benefits, travel, or operating costs other than those listed in subrule (1)(b) of this rule of the applicant business.
- (e) Taxes, attorney fees, permits or licenses, or land acquisition.
- (f) Projects or expenditures designed to increase process output or production.

History: 1998-2000 AACCS; 2013 AACCS.

R 324.14505 Loan application process.

Rule 5. (1) A small business shall file an application for a small business pollution prevention loan on an application form provided by the department.

(2) The application shall include all of the following information:

- (a) Applicant and lending institution contact information.
- (b) A description of the pollution prevention project, which provides sufficient detail to properly evaluate the proposed project and determine whether it meets the criteria of R 324.14504.
- (c) The expected reduction in environmental waste, water, or energy used.
- (d) A project implementation schedule.
- (e) The small business pollution prevention loan amount.
- (f) Certification that all necessary construction permits and operating licenses have been obtained, or will be obtained, under applicable laws and regulations.

(3) The lending institution or applicant shall submit the completed loan application and supporting documentation to the department for approval. At a minimum, supporting documentation shall include all of the following:

- (a) Written cost estimate(s) for all project costs.
- (b) A loan commitment letter from the lending institution including the following information:
 - (i) A commitment to participate in the small business pollution prevention loan program with the department.
 - (ii) The lending institution's federal tax identification number.

(iii) The conclusion that the loan recipient can service the debt of the full loan amount requested.

(iv) A description of the loan term, interest rate on the lending institution loan portion, and the collateral to be taken as security for the loan.

(4) A lending institution shall not award a small business pollution prevention loan until it receives a notice from the department that the project described in the application is an eligible pollution prevention project.

(5) A lending institution shall execute a small business pollution prevention loan under terms in the loan agreement and the lender agreement.

(6) The applicant shall execute a small business pollution prevention loan under terms in the loan agreement and the supplemental agreement.

History: 1998-2000 AACCS; 2013 AACCS.

R 324.14506 Lending institution responsibilities.

Rule 6. (1) A lending institution shall enter into a lender agreement with the department.

(2) A lender agreement shall provide for all of the following:

(a) A lending institution may make a small business pollution prevention loan to a loan recipient with participation from the fund not to exceed the amount specified in MCL 324.14513(6).

(b) The total amount of the loan shall be shared equally by the lending institution and the fund, unless the director increases the fund's share of the loan to ensure that the fund's interest rate of return is not less than 0%.

(c) The lending institution shall notify the department of the effective interest rate being assessed to the applicant, including the interest rate assessed as part of the fund's share and the interest rate assessed as part of the lending institution's share.

(d) The effective interest rate that the loan recipient pays on the full amount of the loan under the loan agreement shall not exceed 5%.

(e) The lending institution shall provide an executed copy of the loan agreement to the department.

(f) Only appropriate and reasonable costs or fees associated with processing the loan are eligible for reimbursement as part of the loan.

(g) The lending institution will remit principal and interest payments not less frequently than on a quarterly basis to the fund until the loan is repaid in full.

(h) The lending institution will pursue the collection of all defaulted loans until brought current, collected in full, reduced to a judgment, or settled with the concurrence of the department.

(i) The lending institution will consider loan recipients who fail to complete the project to be in default of the loan. This provision shall be included in all loan agreements.

History: 1998-2000 AACCS; 2013 AACCS.

R 324.14507 Small business loan recipient responsibilities.

Rule 7. (1) In addition to any financial provisions required by the lending institution, within 90 days of the project eligibility determination, the small business loan recipient shall enter into a supplemental agreement with the department.

(2) A supplemental agreement shall provide for all of the following:

(a) Initiate work on the pollution prevention project within 180 days of signing the loan documents or supplemental agreement.

(b) Secure qualified personnel or contractors, or both, to complete the pollution prevention activities specified in the loan application.

(c) Notify the department in writing within 30 days of project completion.

(d) Within 90 days of project completion, submit to the department a final report upon project completion describing the pollution prevention benefits attained, including a demonstration of the expected reduction in environmental waste, water, or energy usage.

(e) Obtain written department approval of any amendments to the proposed project, before making the change.

(f) Maintain project records and documentation under generally accepted accounting principles and practices for a minimum of 3 years after the project is completed.

(g) Maintain all of the following documentation at the loan recipient's business:

(i) Copies of invoices and evidence of payment of invoiced expenditures.

(ii) Information pertinent to the project implementation as agreed to in the loan application.

(iii) Evidence that the project was implemented in compliance with applicable rules and regulations.

(h) Upon completion, operate the project for pollution prevention purposes and in accordance with applicable environmental laws and regulations.

(3) Upon reasonable notice, the department or its duly authorized representatives shall have access to examine the pollution prevention project and the records or documents maintained by the small business under these rules.

History: 1998-2000 AACCS; 2013 AACCS.

R 324.14508 Project review; approval process; other actions.

Rule 8. (1) The department shall process loan applications on an as-received basis.

(2) The department shall determine whether the application and supporting documentation meet the requirements of these rules within 30 days of receipt of a complete application.

(3) The department shall notify the lending institution and the applicant, in writing, within 14 days of making its determination.

(4) A loan recipient shall not proceed with the pollution prevention project until the recipient is notified in writing by the lending institution to proceed.

(5) The department's determination of project eligibility is valid for 90 days from the date of notification.

(6) The lending institution or the loan recipient shall promptly notify the department, in writing, of any substantive change to an eligible pollution prevention project before expenditure or encumbrance of any loan funds.

(7) The department will remit payment for its share of the loan from the fund to the lending institution within 30 days from the date of receipt of the executed loan agreement.

(8) In the case of an ineligibility determination, the department shall provide the applicant with written notice of the reason for the determination. There is no formal appeal of the department's loan decision.

(9) Subject to the provisions of R 324.14503(1)(e), a small business can reapply for a loan at any time.

(10) If the department or the lending institution determines that a loan recipient has defaulted on any agreements signed or obligations pursuant to this part, in addition to the actions specified in the lender and supplemental agreements, the department may take any legal actions available to remedy the default.

History: 1998-2000 AACCS; 2013 AACCS.