

94-457 FINANCE AUTHORITY OF MAINE

Chapter 326: COMPLIANCE ASSISTANCE LOAN PROGRAM

Summary: This rule establishes the procedures and standards applicable to borrowers participating in the Finance Authority of Maine's statewide program for making loans to finance the renovation, removal, disposal or replacement of all or any part of certain oil storage facilities or tanks and certain air quality improvement equipment, in conjunction with the Maine Municipal Bond Bank and the Maine Department of Environmental Protection.

1. Definitions

- A. **Reference to Act definitions.** Certain terms used in this rule which are defined in the Finance Authority of Maine Act, 10 M.R.S.A. §961 and following (the "Act"), shall have the meaning set forth in the Act unless clearly specified otherwise or unless the context clearly indicates otherwise.
- B. **Defined Terms**
- 1) "Aboveground Oil Storage Facility" or "Aboveground Facility" means any aboveground oil storage tank or tanks, together with associated piping, and transfer and dispensing facilities located over land or water of the State at a single location for more than four months per year that is used or intended to be used for the storage or supply of oil. Oil terminal facilities, as defined in 38 M.R.S.A. §542(7), and propane facilities are not included in this definition.
 - 2) "Aboveground Oil Storage Tank" or "Aboveground Tank" means any aboveground container, less than 10% of the capacity of which is beneath the surface of the ground, that is used or intended to be used for the storage or supply of oil. Included in this definition are any tanks situated upon or above the surface of a floor in such a manner that they may be readily inspected.
 - 3) "Borrower" means a person or entity that meets the eligibility requirements set forth in Section 3 of this rule, and includes a prospective borrower where the context requires. If the borrower is a real estate holding company or is a subsidiary or affiliate of or is related to an entity with 50% or more common ownership "borrower" shall include the parent, affiliated or related entity when determining eligibility, including the net worth and debt service coverage of the borrower. A borrower does not include a unit of local government.
 - 4) "Chief Executive Officer" means the Authority's Chief Executive Officer or a person acting under the supervisory control of the Chief Executive Officer.
 - 5) "Current Obligation(s)" means the portion of all outstanding debts including principal and interest owed by the borrower due within one year of the date of application, including payments on leases of real and personal property.

- 6) "Debt Service Coverage" means an amount equal to the quotient of a fraction, the numerator and denominator of which are as follows:

$$\frac{\text{Net Income} + \text{Interest} + \text{Depreciation} + \text{Amortization}}{\text{Current Obligations} + \text{Proposed Loan Obligations}}$$

- 7) "Equipment Related to Air Quality Improvement" means any equipment which must be installed by a gasoline service station to comply with applicable laws and regulations regarding gasoline service station vapor control and petroleum liquids transfer vapor recovery pursuant to the requirements of applicable law.
- 8) "Gasoline Service Station" means a single location from which a) motor fuel is sold to the general public or b) motor fuel is distributed solely for the use of officers or employees or owners of the location. A gasoline service station does not include a location from which motor fuel is distributed only for later sale.
- 9) "Net Income" means net income as determined by generally accepted accounting principles, as applied by the Authority. The determination of the borrower's net income shall be based on the financial statements and tax return for the borrower's most recent fiscal year and interim financial statements as the Authority may require. The Authority may rely on financial statements and tax returns from previous fiscal years if, in the discretion of the Authority, they are necessary to make a determination of net income.
- 10) "Net Worth" means, in the case of an individual or sole proprietorship, the total value of the equity of the borrower, the borrower's spouse, and dependents in all real and personal property, excluding the borrower's principal residence. In the case of a corporation or a limited liability company, net worth shall be defined in accordance with generally accepted accounting principles and shall include the individual net worth of each stockholder or member owning 20% or more of the outstanding and issued stock or ownership units of the corporation or limited liability company. In the case of a partnership, net worth shall be defined in accordance with generally accepted accounting principles and shall include the individual net worth of each general partner. In the case of a trust, net worth shall be defined in accordance with generally accepted accounting principles and shall include the individual net worth of each beneficiary of 20% or more of the proceeds of the trust. In the case of a co-op, net worth shall be defined in accordance with generally accepted accounting principles and may include the individual net worth of major owners in the discretion of the Authority.
- 11) "Members" means the members of the Finance Authority of Maine.
- 12) "Program" means the Compliance Assistance Loan Program governed by agreement between the Finance Authority of Maine ("Authority"), the Maine Municipal Bond Bank, the Maine Department of Environmental Protection ("MDEP"), and this rule.

- 13) "Project" means a) the renovation, removal, disposal or replacement of all or any part of an eligible underground oil storage facility or tank, or b) the construction (in connection with replacement), replacement or renovation of an aboveground tank or aboveground facility, or c) or the installation of equipment related to the improvement of air quality in association with a project described in subsection (a) or (b) of this section 1(B)(13). A project may include the costs associated with replacement or repair of a fire suppression system or any portion thereof if an existing fire suppression system or any portion thereof has been damaged during the course of other work associated with the project.
- 14) "State" means the State of Maine.
- 15) "Underground Oil Storage Facility" or "Underground Facility" means any tank, together with associated piping and dispensing facilities, 10% or more of which is located beneath the surface of the ground and not on or above a floor in such a manner that it may be readily inspected, located at a single location and used, formerly used or intended to be used for the marketing and distribution of oil, petroleum products or their by-products to persons or entities other than the owner of the facility.
- 16) "Underground Oil Storage Tank", or "Underground Tank" means any tank, together with associated piping, 10% or more of which is located beneath the surface of the ground and not on or above a floor in such a manner that it may be readily inspected, located at a single location and used, formerly used or intended to be used for consumption by the owner or user of the tank on the premises.

2. Program Implementation and Assistance Provided

The program shall be administered by and is delegated to, the Chief Executive Officer. The Authority may provide financial assistance in the form of a loan in the amount actually necessary to complete a project up to \$400,000 to an eligible borrower. Assistance under this program shall be from the Clean Water State Revolving Fund pursuant to agreement among the Authority, the Maine Municipal Bond Bank and the MDEP.

3. Eligibility

- A. To be eligible for financial assistance under the program, a borrower must demonstrate at least one of the following:
 1. The borrower is the owner or operator of an existing underground oil storage facility or underground tank which a) is located on premises which are not used solely for residential, including rental residential, purposes; and b) is leaking or has been identified by the MDEP as posing an environmental threat, or removal is required by applicable law or rule;

2. The borrower is required by applicable law or regulation to install equipment related to air quality improvement in association with a project described in subsections 1, 3, or 4 of this section 3(A);
3. The borrower is constructing, replacing or renovating an aboveground tank or an aboveground facility and the work is being supervised by a State registered professional engineer or State certified tank installer with training and experience in aboveground oil storage facility installation; or
4. The borrower is renovating an underground oil storage tank or facility, and the work is supervised by an underground oil storage tank installer certified by the Maine Board of Underground Storage Tank Installers and the estimated cost of the work is greater than \$1,000.

Notwithstanding anything herein to the contrary, owners or operators of 15 or more gasoline service stations are not eligible for financial assistance under the program.

- B. To be eligible for financial assistance under the program, a borrower must demonstrate each of the following:
- 1) Financial need for the assistance.
 - 2) A reasonable likelihood that the borrower will be able to repay the loan.
 - 3) Any financial assistance will be used only for a project.
- C. A borrower shall be eligible for a loan in accordance with the following criteria:
- 1) Subject to the limitations of subsection 3(C)(5), a borrower shall be eligible for a loan with interest of 6% below the high prime rate of interest as published by the Wall Street Journal on the date of the commitment letter if the borrower's debt service coverage is 1.0 or greater, but less than 1.2. In no event shall a loan to any borrower made under this subsection be at an interest rate less than 1%.
 - 2) Subject to the limitations of subsection 3(C)(5), a borrower shall be eligible for a loan with interest of 4% below the high prime rate of interest as published by the Wall Street Journal on the date of the commitment letter if the borrower's debt service coverage is 1.2 or greater, but less than 1.5. In no event shall a loan to any borrower made under this subsection be at an interest rate less than 2%.
 - 3) Subject to the limitations of subsection 3(C)(5), a borrower shall be eligible for a loan with interest at 2% below the high prime rate of interest as published by the Wall Street Journal on the date of the commitment letter if the borrower's debt service coverage is 1.5 or greater, but less than 2.5. In no event shall a loan to any borrower made under this subsection be at an interest rate less than 3%.

- 4) Subject to the limitations of subsection 3(C)(5), a borrower shall be eligible for a loan at the high prime rate of interest as published by the Wall Street Journal on the date of the commitment letter if the borrower's debt service coverage is 2.5 or greater, but less than 3.0. In no event shall a loan to any borrower made under this subsection be at an interest rate less than 3.5%.
 - 5) A borrower with debt service coverage of 3.0 or greater or net worth of \$750,000 or greater shall not be eligible for assistance under the program, unless the borrower can demonstrate financial need to the satisfaction of the Authority.
- D. A borrower may obtain a loan for a project that has already been completed if the borrower provides satisfactory evidence of compliance with each of the following:
- 1) The project was completed no later than nine months previous to the date the complete application is received by the Authority.
 - 2) The loan is made to the same individual or entity, who owned or operated the project at the time the project was undertaken.
 - 3) The loan will assist in maintaining a compliant and viable business.
 - 4) Terms shall be set in accordance with section 3(C) hereof.
 - 5) Notwithstanding anything herein to the contrary, projects financed on or after April 1, 2016 pursuant to the Authority's Economic Recovery Program as described in Chapter 311 of the Authority's rules, as amended from time to time, may be considered for refinancing under this program, if an application is made within three months of the effective date of this rule.

4. Application Procedure and Content

Each borrower shall submit an application to the Chief Executive Officer on such forms and with such attachments as the Chief Executive Officer may require consistent with the purposes of the program and this rule. The Chief Executive Officer will review each application for completeness and eligibility. Applications that are not substantially complete may be deemed not received until completed. The Chief Executive Officer shall determine when an application is received, which determination shall be final. An application shall contain, at a minimum, such general information identifying and describing the borrower, the proposed project, and the proposed financing of the project as specified in the application form and as otherwise requested by the Chief Executive Officer.

5. Criteria and Considerations

- A. No application will be approved unless the MDEP and the Chief Executive Officer determine that the borrower is eligible and that the loan proceeds will be used for a project.
- B. No application will be approved unless the Chief Executive Officer determines that the application is complete and that information sufficient to make an informed decision on the application has been received.
- C. The Authority may rely upon information provided to it by the MDEP regarding whether a project is eligible. MDEP shall certify to the Authority the eligibility of applicants under Section 3(A) of this rule.

6. Terms and Conditions; Fees and Other Charges.

- A. Periodic payments of principal and interest on loans shall be established in accordance with a borrower's individual needs.
- B. Loans shall not exceed terms of 15 years.
- C. Additional requirements and covenants of each loan may be established, provided that each borrower shall at a minimum be required to maintain and repair collateral, maintain adequate insurance covering public liability, hazard, and flood insurance if the borrower is located in a flood plain, and comply with all applicable federal, State and local laws, regulations, ordinances and orders. Each borrower shall also be required to maintain such environmental liability insurance as may be required by the Chief Executive Officer.
- D. The borrower shall pay to the Authority a loan origination fee equal to 1.5% of the loan amount as follows: 1% due at closing and .5% payable monthly over the first year of the loan. Commencing on the first anniversary date of the loan and annually thereafter, the borrower shall also pay to the Authority an annual loan administration fee in an amount equal to .75% of the outstanding principal balance of the loan remaining due, payable over the next 12 months of the loan. The borrower shall be responsible for the Authority's attorney's fees (whether of the Authority's legal division or outside counsel) and all out of pocket costs and expenses of underwriting, closing, administering and collecting the loan.
- E. Closing costs, but not loan origination or administration fees, may be financed.
- F. Any loan made pursuant to this program may be assumed by a purchaser of the premises from which the facility or tank is removed, provided that the loan may only be assumed by a for profit entity which would be eligible for a loan on the same terms and conditions as the original borrower. The eligibility of any such assuming entity shall be determined by the Chief Executive Officer.
- G. Removal or disposal of any underground oil storage tank must be completed by or under the direction of a person certified by the Maine Board of Underground Storage Tank

Installers or by professional fire-fighting personnel in accordance with 38 M.R.S.A. §566(A)(5). All replacement tanks or facilities must comply with Chapter 691 of the rules of the MDEP and applicable law. All disposal of tanks and facilities and installation of equipment related to air quality improvement shall be in accordance with applicable laws. The Authority may require evidence of compliance with these conditions.

7. Collateral

- A. Repayment of any loan pursuant to the program shall be secured by such collateral as the Chief Executive Officer may require, including without limitation, a mortgage or security interest in real estate, buildings or personal property of the business entity, subject only to such other encumbrances as the Chief Executive Officer may approve, assignment or pledges of leases, and personal or corporate guarantees. Personal guarantees of the principals shall be required unless compelling reasons are presented justifying not requiring a guarantee.
- B. Loans may, at the discretion of the Chief Executive Officer, be secured by collateral valued for collateral purposes at less than the amount of the loan, when necessary to ensure the replacement of a facility or tank or the installation of equipment related to the improvement of air quality required to be replaced or installed under applicable law.
- C. Real estate or stationary machinery or equipment constituting a significant portion of collateral for repayment of a loan shall be located within the State. Mobile machinery or equipment, including vessels, constituting a significant portion of collateral for repayment of the loan shall be registered with and taxed by the State or municipal authorities, if the State or municipal authorities register or tax machinery or equipment of a type similar to the collateral, and shall be stored or berthed in the State when not in use.

8. Commitment

- A. Upon approval of a loan application by the Chief Executive Officer, a commitment will be issued setting forth the terms and conditions upon which the loan will be extended.
- B. In the event the Chief Executive Officer rejects any application, the Chief Executive Officer will promptly send the applicant notice containing reasons for the rejection. The notice shall include a statement of the applicant's right to appeal the Chief Executive Officer's decision to the members.

9. Appeal to the Members

In the event that an application is rejected by the Chief Executive Officer, the applicant shall have the right to appeal the decision of the Chief Executive Officer to the members, provided that such appeal shall not affect processing of other applications received prior to the notice of appeal. Notice of the appeal, together with a statement of the reasons why the Chief Executive Officer's

decision should be reversed or modified, shall be given to the Chief Executive Officer in writing within 20 days after the date the Chief Executive Officer mailed the notice of rejection to the applicant. The appeal shall be heard at a meeting of the members, and the applicant must be present to support the appeal. The appeal shall be based on the record before the Chief Executive Officer on the date of the rejection. The decision of the Chief Executive Officer shall be final unless the members determine that the rejection by the Chief Executive Officer was arbitrary, capricious or an abuse of discretion, in which event the members may overturn or modify the decision of the Chief Executive Officer and may direct the Chief Executive Officer to take further action with respect to the application. Priority of any application with respect to which the Chief Executive Officer's rejection has been overturned or modified shall be determined as of the date and time of receipt of the notice of appeal.

STATUTORY AUTHORITY: 10 M.R.S.A. §969-A(14)

EFFECTIVE DATE:

Basis Statement

The rule is necessary to inform borrowers of the requirements and standards for obtaining loans from the Clean Water State Revolving Fund made available for the purposes expressed in the rule. The rule sets forth eligibility requirements for borrowers and projects to be financed, and terms and conditions of loans. In drafting the rule, the Authority relied on its experience in administering similar programs, the professional judgement of its staff, and consultation with the Maine Department of Environmental Protection and the Maine Municipal Bond Bank.

Economic Impact Statement – Small Businesses

The rule is not expected to have any adverse impacts on small businesses.

Fiscal Impact Note

The rule will not impose any costs on municipalities or counties.