# **94-457 FINANCE AUTHORITY OF MAINE**

**Chapter 318: WELLS AND PLYMOUTH WASTE OIL CLEAN-UP PROGRAM**

**Summary**: This rule establishes the procedures and standards applicable to grant recipients, loan recipients and financial institutions participating in the Authority's statewide program for awarding grants and for making loans to finance the response costs incurred by responsible parties for the investigation, removal and remediation of waste-oil contamination at the Portland-Bangor Waste Oil Services Sites in Wells and Plymouth.

**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. Section 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) "Chief Executive Officer" means the Authority's Chief Executive Officer or a person acting under the supervisory control of the Chief Executive Officer.

(2) "Current Obligation(s)" means the portion of all outstanding debts including principal and interest owed by the recipient due within one year of the date of application, including payments on leases of real and personal property.

(3) "Debt Service Coverage" means an amount equal to the quotient of a fraction, the numerator of which is the sum of the recipient's net income plus depreciation plus interest and the denominator of which is the sum of the recipient's current obligations, plus proposed payments of principal and interest.

(e.g. Debt Service Coverage =

Net Income + Depreciation + Interest

Current Obligations + Proposed Loan Obligations)

(3-A-1) “De Minimis Settlement” means a final settlement, including cash payments and premiums, pursuant to Section 122(g)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. Section 9622(g)(1).

(3-A-2) “Institutional Controls” means implementation of those controls selected by the United States Environmental Protection Agency to prevent use of contaminated groundwater by residents near the Plymouth Waste Oil Disposal Site.

(4) "Members" means the members of the Finance Authority of Maine.

(5) "Net Income" means net income as determined by generally accepted accounting principles, as applied by the Authority. The determination of the recipient's net income shall be based on the financial statements and/or tax return for the recipient's most recent fiscal year and interim financial statements as the Authority may require. The Authority may request 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.

(6) "Net Worth" means, in the case of an individual or sole proprietorship, the total value of the equity of the recipient, the recipient's spouse, and dependents in all real and personal property, excluding the recipient's principal residence. In the case of a corporation, net worth shall be defined in accordance with generally accepted accounting principles and shall include the individual net worth of each stockholder owning 20% or more of the outstanding and issued stock of the corporation. 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.

(7) “Orphan Share” means the percentage of the total response costs at the Wells Waste Oil Disposal Site attributable to parties who are deemed bankrupt, dissolved, insolvent, or no longer in business or whose current identity or location can not be determined, as determined and certified by a person assuming liability for total response costs, for the purposes of determining the price at which it is willing to settle with those Responsible Parties who desire to settle and sign a consent decree relating to payment of the Responsible Parties’ share of the total response costs at the Wells Waste Oil Disposal Site.

(7-A) “Oversight costs” means all costs incurred or to be incurred by the United States Environmental Protection Agency or the Maine Department of Environmental Protection in monitoring, supervising and overseeing work performed by Responsible Parties at the Plymouth Waste Oil Disposal Site, including costs of reviewing plans, reports and other documents submitted by Responsible Parties pursuant to applicable administrative orders or consent decrees.

(8) “Past cost settlement” means the settlement between the potentially responsible parties, the United States and the State, embodied in the consent decree filed with the United States District Court for the District of Maine, Civil Docket Number 00-249-B

(9) “Plymouth Applicant” means an applicant for participation in the Program based on potential liability for Response Costs at the Plymouth Waste Oil Disposal Site.

(10) “Plymouth Waste Oil Disposal Site” means the Portland-Bangor Waste Oil Services site in Plymouth, Maine.

(11) "Program" means the Wells and Plymouth Waste Oil Clean-up Program governed by the Act and this rule.

(12) "Project" means, with respect to Wells Applicants under Section 3, the direct payment to a service provider, or reimbursement to a recipient of Response Costs incurred and/or paid by a recipient as a result of said recipient being a Responsible Party in relation to the Wells Waste Oil Disposal Site, and with respect to Plymouth Applicants under Section 4, the payment of or reimbursement for a portion of the costs of institutional controls, a Remedial Study, Time Critical Removal Action, remedial action, oversight costs, de minimis settlement, or a past cost settlement incurred and/or paid by a recipient as a result of said recipient being a Responsible Party in relation to the Plymouth Waste Oil Disposal Site.

(13) "Recipient" means a person or entity that meets the eligibility requirements set forth in Section 3 or Section 4 of this rule, and includes a prospective recipient where the context requires. If the recipient 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 "recipient" shall include the parent, affiliated or related entity when determining eligibility, including the net worth and debt service coverage of the recipient.

(13-A) “Remedial action” means those activities undertaken by Responsible Parties at the Plymouth Waste Oil Disposal Site to satisfy one or more parts of the final remedy for the Site in accordance with applicable administrative orders or consent decrees.

(14) “Remedial Study” means a remedial investigation and feasibility study undertaken in connection with 40 CFR §300.430 with respect to the Plymouth Waste Oil Disposal Site.

(15) “Response Costs” means some portion less than 100% of Total Response Costs, as defined in the Act.

(16) “Responsible Party” means a responsible party as defined in the Act, as well as any party listed on the Portland-Bangor Waste Oil Transactional Database for a Waste Oil Disposal Site prepared by the Maine Department of Environmental Protection and/or its agents (as it may be amended from time to time) and, with respect only to Wells Applicants, who has signed a consent decree with the Maine Department of Environmental Protection providing for remediation of the Wells Waste Oil Disposal Site.

(17) “Time-critical removal action” means the removal activities undertaken pursuant to the Administrative Order by Consent for Time-Critical Removal Action, United States Environmental Protection Agency Docket Number CERCLA 1-97-1080.

(18) "State" means the State of Maine.

(19) “Waste Oil Disposal Site” means either the Wells Waste Oil Disposal Site, or the Plymouth Waste Oil Disposal Site.

(20) “Wells Applicant” means an applicant for participation in the Program based on potential liability for Response Costs at the Wells Waste Oil Disposal Site.

(21) “Wells Waste Oil Disposal Site” means the Portland-Bangor Waste Oil Services site in Wells, Maine.

**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 direct loan or (with respect only to eligible Wells Applicants) a grant. Assistance under this program may be combined, to the extent possible, with assistance under other Authority programs.

**3. Eligibility (Wells Applicants)**

A. **General eligibility**

To be eligible for financial assistance under the program, a recipient must demonstrate each of the following:

(1) The recipient, or a person or entity for which the recipient has agreed to assume liability for Response Costs (for reasons other than solely participation in the Program), has been determined by the Maine Department of Environmental Protection (MDEP) to be a Responsible Party with respect to the Wells Waste Oil Disposal Site;

(2) If the recipient is not a municipality, and has applied for a loan, it has demonstrated financial need for assistance as determined by the Authority under section 3(C);

(3) If the recipient has applied for a loan, it has demonstrated a reasonable likelihood that it will be able to repay the loan;

(4) The recipient has reached an agreement with an entity that has assumed liability for Total Response Costs at the Wells Waste Oil Disposal Site fixing the total liability of the recipient for Response Costs, and the recipient has incurred liability for or has paid Response Costs to that entity in connection with the Wells Waste Oil Disposal Site;

(5) Any financial assistance will be used only for a Project; and

(6) For loan applicants, the recipient is domiciled or has a place of business in the State or has agreed to assume liability for Response Costs (for reasons other than solely participation in the Program) of a person or entity which is domiciled or has a place of business in the State; for grant applicants, the recipient, or a person or entity for which the recipient has agreed to assume liability for Response Costs (for reasons other than solely participation in the Program) is: (a) a natural person domiciled in the State, (b) a corporation or partnership with a place of business in the State, (c) the State, any agency, authority, department, commission, municipality, quasi-municipality, special purpose district or other instrumentality of the State, a political subdivision of the State (including without limitation those defined in 14 MRSA c. 741 and 30-A MRSA c. 225), or (d) any other entity identified as a Responsible Party at the Wells Waste Oil Disposal Site whose waste oil is identified as delivered to the Wells Waste Oil Disposal Site and picked up from an address or location within the State in the records compiled by the Maine Department of Environmental Protection or the United States Environmental Protection Agency or their agents.

Anything in this subsection 3(A) to the contrary notwithstanding, neither (i) the Federal Government (including all of its agencies, authorities, departments, boards, commissions and instrumentalities), nor (ii) an entity assuming liability for Total Response Costs, shall be eligible for participation in the Program, and the participation of any other entity whose eligibility is based on the assumption of Response Costs of another person or entity is limited to the Response Costs of the party or parties whose liability is so assumed.

B. **Grants**

(1) A recipient shall be eligible for a grant equal to the lesser of (i) $2,000.00, or (ii) the actual amount of Response Costs paid or incurred by the recipient, provided a completed application, together with a copy of an invoice or cancelled check (or other evidence of the recipient’s liability for or payment of Response costs acceptable to the Authority) is submitted by the recipient on or before May 15, 2000. Grants will be disbursed directly to the recipient where the recipient has submitted evidence of its prior payment of Response Costs, and will be made in the form of joint checks payable to both the recipient and the service provider where the recipient has provided evidence of the incurrence but not payment of the Response costs.

(2) A recipient shall be eligible for an additional grant equal to its pro rata share of the difference between $3,100,000.00 and the total sum of all grants awarded under section 3(B)(1) (with its pro rata share defined for the purposes of this paragraph as a fraction of such difference, the numerator of which fraction is the amount required to be paid by the recipient to settle its liability for response costs, reduced by the grant received by such recipient under section 3(B)(1), and the denominator of which is the total response costs attributable to persons who, after application, are determined to be eligible for a grant under section 3(B)(1)), provided however that the additional grant (when added to any grant received by the recipient under section 3(B)(1)) may not exceed the amount required to be paid by the recipient to settle its liability for response costs, multiplied by the Orphan Share. In order to receive an additional grant under this paragraph, the recipient must make a written election to receive the additional grant in lieu of receiving a deferred loan pursuant to section 3(C), and provide proof of payment of its share of total response costs, no later than June 15, 2000. No recipient may receive an additional grant under this paragraph and a deferred loan under section 3(C). The additional grants awarded under this paragraph will be disbursed in the same manner as those under section 3(B)(1), except that grants under this section 3(B)(2) to recipients who have received a loan under section 3(C) shall be retained by the Authority and applied to the recipient’s loan balance, with any excess amount, if any, over the amount necessary to pay the loan in full, being paid to the recipient. Grants under this section 3(B)(2) will be completed on or before June 30, 2000.

C. **Direct Loans**

Recipients may be eligible for direct loans of up to an aggregate of $50,000.00 per recipient, in accordance with the following criteria:

(1) A recipient shall be eligible for a deferment of interest accrual and loan payments for a period of three years if: a) the recipient's debt service coverage is less than 1.0; b) the recipient has no other readily available source of funds to undertake the project, and c) the recipient has not received a grant under section 3(B)(2). The terms and conditions of such deferred loan shall include the terms set forth in subsection 3(C)(8) hereof.

(2) A recipient shall be eligible for a direct loan with interest at the rate of 0% if the recipient's debt service coverage is 1.0 or greater, but less than 1.2;

(3) Subject to the limitations of subsection 3(C)(6) a recipient shall be eligible for a direct loan with interest at the rate of 6% below the prime rate as published by the Wall Street Journal on the date of the commitment letter if the recipient's debt service coverage is 1.2 or greater, but less than 1.5. In no event shall a loan to any recipient made under this subsection be at a rate less than 3%.

(4) Subject to the limitations of subsection 3(C)(6), a recipient shall be eligible for a direct loan with interest at the rate of 2% below the prime rate as published by the Wall Street Journal on the date of the commitment letter if the recipient's debt service coverage is 1.5 or greater, but less than 2.5.

(5) Subject to the limitations of subsection 3(C)(6), a recipient shall be eligible for a direct loan with interest at the prime rate as published by the Wall Street Journal on the date of the commitment letter, if the recipient's debt service coverage is 2.5 or greater, but less than 3.0.

(6) A recipient 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 recipient can demonstrate financial need to the satisfaction of the Authority.

(7) Notwithstanding any provision of this Section 3, a recipient that is a unit of a local government shall only be eligible for a direct loan with interest at the rate of 2% below the prime rate as published by the Wall Street Journal on the date of the commitment letter.

(8) All deferred loans made pursuant to subsection 3(C)(1) of this Rule shall be evidenced by a commercial note which shall bear interest at the rate of 2% below the prime rate as published by the Wall Street Journal commencing on the date of the third anniversary of the Note, provided however, if the recipient provides updated, current financial statements satisfactory to the Authority prior to the third anniversary of the Note, the Authority may revise the commercial note in accordance with the repayment terms set forth in Section 3(C)(2)-(5).

**4. Eligibility (Plymouth Applicants)**

A. **General eligibility**

To be eligible for financial assistance under the program, a recipient must demonstrate each of the following:

(1) The recipient has been identified by the United States Environmental Protection Agency (“EPA”) as a potentially responsible party with respect to the Plymouth Waste Oil Disposal Site and has been alleged by the EPA to have generated waste oil from an address or location within the State;

(2) The recipient has signed the Administrative Order by Consent pursuant to EPA Docket Number CERCLA 1-2000-0004;

(3) The recipient has signed the West Site/Hows Corner RI/FS Group Agreement;

(4) The recipient is not a federal or state agency;

(5) The recipient has demonstrated a reasonable likelihood that it will be able to repay the loan;

(6) The recipient has been determined by the EPA to have an ability to pay; and

(7) To the extent that money in the fund will be used for all or part of the costs of the remedial design, the recipient has signed the Administrative Order by Consent for remedial design in the matter of the Plymouth Waste Oil Disposal Site (West Site/Hows Corner).

(8) To the extent that money in the fund will be used for all or part of the remedial action costs, the recipient has signed the Remedial Action Consent Decree for the Plymouth Waste Oil Disposal Site (West Site/Hows Corner).

(9) To the extent that money in the fund will be used for all or part of a de minimis settlement, the recipient has signed all settlement documents required by the EPA or the Maine Department of Environmental Protection.

B. **Direct Loans**

Recipients may be eligible for direct loans of not more than the recipient establishes it has paid or agreed to pay for the institutional controls, Remedial Study, past cost settlement, remedial design, technical impracticability study, oversight costs, remedial action costs, de minimis settlement, and time-critical removal action costs, but not including any attorneys’ fees related thereto, except attorneys’ fees incurred for the preparation of restrictive covenants, including deed and title research, for the properties within the area identified by the United States Environmental Protection Agency as the institutional control zone in order to implement institutional controls, in accordance with the following criteria:

(1) Repayment on all loans shall be deferred until the United States Environmental Protection Agency determines that construction of a final remedy is complete with respect to the Plymouth Waste Oil Disposal Site, after which the loan must be repaid over a period not exceeding the ensuing 10 years.

(2) All loans shall bear interest at the rate of 0%.

In the event the aggregate amount of direct loans sought by eligible recipients exceeds the amount of funds available for such loans, the amount of a recipient’s direct loan shall be limited to its pro-rata share of available funds, based upon the percentage that said recipient’s liability for the remedial design, technical impracticability study, institutional controls, remedial study, past cost settlement, oversight costs, remedial action costs, de minimis settlement, and time-critical removal action costs represents of the total of all recipients’ liability for the remedial design, technical impracticability study, institutional controls, remedial study, past cost settlement, oversight costs, remedial action costs, de minimis settlement, and time-critical removal action costs, as determined by the Chief Executive Officer.

**5. Application Procedure and Content**

Each recipient 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 recipient, 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. ALL APPLICATIONS FOR LOANS UNDER SECTION 4 MUST BE COMPLETE AND SUBMITTED SO AS TO BE RECEIVED BY THE AUTHORITY ON OR PRIOR TO the deadline set forth in 10 M.R.S.A. §1023-M, as it may be amended. To the extent the Authority is authorized to extend the deadline for good cause shown, good cause shall be as determined by the Authority in its discretion. Applications received after such date will be considered only if funds remain available after all applications received by the deadline are fully funded.

**6. Criteria and Considerations**

A. *[Repealed]*

B. No application will be approved unless the Chief Executive Officer determines that the recipient is eligible and that the loan proceeds will be used for a project.

C. 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.

D. The Authority may rely upon information provided to it by the Department of Environmental Protection and/or the United States Environmental Protection Agency regarding whether a project is eligible.

**7. Loan Terms and Conditions; Premiums, Fees and Other Charges**

A. Periodic payments of principal and interest on direct loans shall be established in accordance with section 3(C) or 4(B) and a recipient's individual needs.

B. Direct loans shall not have repayment periods that exceed ten (10) years.

C. Additional requirements and covenants of each direct loan may be established, provided that each recipient shall at a minimum be required to maintain and repair collateral, maintain adequate insurance covering public liability, hazard, and flood insurance if recipient is located in a flood plain, and comply with all applicable federal, State and local laws, regulations, ordinances and orders.

D. In the case of a grant, the Authority shall be entitled to charge the interest earnings on the Waste Oil Clean-up Fund an origination and processing fee equal to $200.00. In the case of a direct loan, the Authority shall be entitled to charge the interest earnings on the Waste Oil Clean-up Fund an origination and processing fee equal to 2% of the loan amount at closing, and the recipient shall be responsible for the Authority's out of pocket costs and expenses of closing, administering and collecting the loan. Commencing on the first anniversary date of the date of the loan and annually on the same date thereafter, the Authority shall be entitled to charge the interest earnings on the Waste Oil Clean-up Fund an annual loan administration fee in an amount equal to 1% of the outstanding principal balance of the loan remaining due on each such anniversary date.

E. *[Repealed]*

F. The Authority, in the sole discretion of the Chief Executive Officer, may reduce the rate of interest, increase the term of any loan including loans with original terms of ten (10) years, or otherwise change the terms of loans in the event a recipient can show adverse circumstances resulting in financial hardship.

**8. 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 recipient, 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 payment of Response Costs.

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.

**9. Commitment**

A. Upon approval of a direct loan or grant application by the Chief Executive Officer, a commitment will be issued setting forth the terms and conditions upon which the loan or grant will be extended.

B. *[Repealed]*

C. *[Repealed]*

D. 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.

**10. 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.

**11. Waiver of Rule**

The Chief Executive Officer may waive any requirement of this rule, except to the extent that the requirement is mandated by the Act, in cases where the deviation from the rule is insubstantial and is not contrary to the purposes of the program.

STATUTORY AUTHORITY: 10 M.R.S.A. §§ 969-A(14), 1023-L(3-A), 1026-R(3) as reallocated from 1026-Q(3)), 1023-M(3) and 1026-S.

EFFECTIVE DATE:

January 17, 2000

AMENDED:

June 12, 2000 (EMERGENCY - expires September 19, 2000)

August 21, 2000

NON-SUBSTANTIVE CORRECTIONS:

November 26, 2000 - removed typo (stray character) on page 8

AMENDED:

July 3, 2001 (EMERGENCY- expires October 1, 2001)

September 3, 2001

June 15, 2003 (EMERGENCY - expires September 13, 2003) - filing 2003-189

August 3, 2003 - filing 2003-257

April 28, 2004 - filing 2004-127 (EMERGENCY)

July 13, 2004 - filing 2004-261

NON-SUBSTANTIVE CORRECTION:

October 13, 2004 - removed "Emergency" and "Amendment 4" from chapter's title

AMENDED:

July 24, 2007 – filing 2007-299 (EMERGENCY)

November 26, 2007 – filing 2007-499, Amendment 5

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 17, 2025