

**CHAPTER 340E**  
**SAFE DRINKING WATER**

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## **Cross References**

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

## **Case Notes**

Despite evidence that water use permit applicant violated this chapter, neither the water code nor the public trust precluded the commission on water resource management from allocating water to applicant to supply water to domestic end users from a delivery system that may not comply with this chapter; as this jurisdiction separately regulates water allocation and drinking water standards, and there was no discernable legislative intent to make water use permit applications subject to compliance with this chapter, violations of this chapter were not germane to a review of the propriety of water allocation under the water code and the public trust. 116 H. 481, 174 P.3d 320.

## **"PART I. DRINKING WATER REGULATIONS**

### **Note**

Part heading added by L 1987, c 297, §2(1).

**§340E-1 Definitions.** As used in this chapter:

"Administrator" means the administrator of the United States Environmental Protection Agency.

"Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

"Department" means the department of health.

"Director" means the director of health or the director's authorized agent.

"Federal Act" means the Safe Drinking Water Act, Public Law 93-523, as amended by the Safe Drinking Water Act Amendments of 1986, Public Law 99-339, and the Safe Drinking Water Act Amendments of 1996, Public Law 104-182. This Act is also known as Title XIV of the Public Health Service Act (42 U.S.C. §§300f et seq.).

"Federal agency" means any department, agency, or instrumentality of the United States.

"Injection" means the subsurface emplacement of any material, liquid, semi-solid, or solid, or any admixture thereof, which may add a contaminant to underground waters.

"National primary drinking water regulations" means primary drinking water regulations promulgated by the administrator pursuant to the Federal Act.

"Person" means an individual, corporation, company, association, partnership, county, city and county, state, or federal agency.

"Primary drinking water regulation" means a regulation or rule which:

- (1) Applies to public water systems;
- (2) Specifies contaminants which, in the judgment of the director, may have any adverse effect on the health of persons;
- (3) Specifies for each contaminant either:
  - (A) A maximum contaminant level if, in the judgment of the director, it is economically and technologically feasible to ascertain the level of such contaminant in public water systems; or
  - (B) If, in the judgment of the director, it is not economically or technologically feasible to ascertain the contaminant level[,], each treatment technique known to the director which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 340E-2; and
- (4) Contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels, including accepted methods for quality control and testing procedures to insure compliance with such levels and proper operation and maintenance of the system, and requirements as to:
  - (A) The minimum quality of water which may be taken into the system; and
  - (B) Siting for new facilities for public water systems.

Quality control and testing procedures published in the Federal Register as guidance by the administrator may be adopted by the director by rule as an alternative for public water systems to the quality control and testing procedures listed in the corresponding and previously promulgated federal primary drinking water regulation.

"Public water system" means a system which provides water for human consumption through pipes or other constructed conveyances if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes:

- (1) Any collection, treatment, storage, and distribution facilities controlled by the system and used primarily in connection with the system; and

- (2) Any collection or pretreatment storage facilities not under the control of, but which are used primarily in connection with the system.

"Secondary drinking water regulation" means a regulation or rule which applies to public water systems and which specifies the maximum contaminant levels which, in the judgment of the director, are requisite to protect the public welfare.

"Supplier of water" means any person who owns or operates a public water system. [L 1976, c 84, pt of §1; gen ch 1985; am L 1987, c 165, pt of §1; am L 1997, c 218, §§4, 10]

" **[§340E-2] Drinking water standards.** (a) The director shall promulgate and enforce State Primary Drinking Water Regulations and may promulgate and enforce State Secondary Drinking Water Regulations. State Primary Drinking Water Regulations shall protect health to the extent feasible, using technology, treatment techniques, and other means which are generally available, taking cost into consideration. Maximum contaminant levels covered by revised National Primary Drinking Water Regulations shall be set at a level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety. Treatment techniques covered by revised National Primary Drinking Water Regulations shall require treatment necessary to prevent known or anticipated adverse effects on the health of persons. The State Primary Drinking Water Regulations shall be not less stringent than the National Primary Drinking Water Regulations in effect at that time.

(b) Subject to section 340E-3, State Primary and Secondary Drinking Water Regulations shall apply to each public water system in the State; however, such regulations shall not apply to a public water system which:

- (1) Consists only of distribution and storage facilities (and which does not have any collection and treatment facilities);
- (2) Obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;
- (3) Does not sell water to any person; and
- (4) Is not a carrier which conveys passengers in interstate commerce.

(c) The director shall adopt and implement procedures for the enforcement of State Primary Drinking Water Regulations, including monitoring, inspection, and recordkeeping procedures, that comply with regulations established by the administrator pursuant to the Federal Act.

(d) The director may promulgate and enforce regulations relating to cross-connection and backflow prevention control.

(e) The director shall promulgate regulations establishing an underground injection control program. Such program shall prohibit any underground injection which is not authorized by a permit issued by the director, except that the director may authorize underground injection by regulation. Underground injection authorized by regulation shall not endanger drinking water sources. Any underground injection control program shall:

- (1) Set standards and prohibitions controlling any underground injection if such injection may result in the presence of any contaminant in underground water which supplies or may be expected to supply any public water system, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.
- (2) Require, in the case of a program which authorizes underground injection by permit, that the applicant for the permit satisfy the director that the underground injection will meet the requirements of item (1) of this subsection.
- (3) Include inspection, monitoring, recordkeeping, and reporting requirements. [L 1976, c 84, pt of §1; am L 1977, c 66, §1]

" **[§340E-2.5] Capacity development.** The director may adopt rules to ensure that public water systems demonstrate technical, managerial, and financial capacity with respect to each state primary drinking water regulation in effect, or likely to be in effect, when the systems supply drinking water or commence operations. [L 1997, c 218, pt of §3]

" **[§340E-3] Variances and exemptions.** The director may issue variances or exemptions from the regulations issued pursuant to section 340E-2 under conditions and in a manner consistent with the public interest; however, such variances or exemptions are not permitted under conditions less stringent than the conditions under which variances and exemptions may be granted under the Federal Act. [L 1976, c 84, pt of §1]

" **§340E-4 Imminent hazards.** The director, upon learning that a contaminant is present in or is likely to enter a public water system or an underground source of drinking water and may present an imminent and substantial danger to the public, may take such actions necessary to protect the health of the public.

The actions which the director may take include but are not limited to:

- (1) Issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment; and
- (2) Commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction. [L 1976, c 84, pt of §1; am L 1984, c 268, §1; am L 1987, c 165, pt of §1]

" **[§340E-4.5] Tampering with public water systems, penalties.** (a) Any person who tampers with a public water system, attempts to tamper with a public water system, or threatens to tamper with a public water system shall be imprisoned for not more than five years and fined an amount not exceeding \$500,000. If the person is an individual, the fine shall not exceed \$250,000.

(b) Any person who tampers, attempts to tamper, or threatens to tamper with a public water system shall be civilly penalized not more than \$50,000.

(c) For the purposes of this section, the term "tamper" shall mean:

- (1) To introduce a contaminant into a public water system with the intention of harming persons; or
- (2) To otherwise interfere with the operation of a public water system with the intention of harming persons. [L 1987, c 165, pt of §1]

" **[§340E-4.6] Inspection of premises.** The director, in accordance with rules adopted pursuant to chapter 91, may enter and inspect any facility of a supplier of water to determine whether such supplier is acting in compliance with this part. [L 1987, c 165, pt of §1]

#### **Revision Note**

"Part" substituted for "chapter".

" **[§340E-4.7] Notification to users of potential lead contamination.** Before June 19, 1988, every public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either the lead content in the construction materials of the public water distribution system or corrosivity of the water supply sufficient to cause leaching

of lead, or both. The notice shall provide a clear and readily understandable explanation of the following:

- (1) The potential sources of lead in the drinking water;
- (2) The potential adverse health effects;
- (3) The reasonably available methods of mitigating known or potential lead content in drinking water;
- (4) Any steps the system is taking to mitigate lead content in drinking water; and
- (5) The necessity for seeking alternative water supplies, if any.

The failure to comply with the notification required in this section shall subject the supplier of water to the same penalties under section 340E-6. [L 1987, c 165, pt of §1]

" **[§340E-4.8] Water catchment systems.** (a) The department shall establish a program to conduct annual testing of water from water catchment systems for lead and copper. Any resident residing in a legal dwelling which relies on a water catchment system for the resident's water needs shall be eligible to participate in the program, subject to the department's procedures and guidelines and the availability of program funds. Residents shall utilize a certified private analytical laboratory specified by the department or the department may conduct the tests. Participating residents shall pay \$25 for the tests and the department shall cover the remainder of the testing cost. One set of tests a year for each legal dwelling may be requested under this program.

(b) The department shall establish procedures and guidelines for the testing which shall:

- (1) Identify sampling and analytical protocols;
- (2) Specify report and notice requirements; and
- (3) Determine participation eligibility procedures and requirements.

(c) The department shall establish a nonregulatory program that provides technical assistance to any resident residing in a legal dwelling which relies on a water catchment system for the resident's water needs for the purpose of improving water quality in that system. To the extent practicable, the department shall assist the resident by recommending practical and affordable methods to improve water quality, based on the specific design and conditions of the water catchment system. [L 1997, c 218, pt of §3]

" **[§340E-5] Plan for emergency provision of water.** The director shall promulgate a plan for the provision of safe drinking water under emergency circumstances. When the director determines that emergency circumstances exist in the State with

respect to a need for safe drinking water, the director may take such actions as necessary to provide water where it otherwise would not be available. [L 1976, c 84, pt of §1; gen ch 1985]

" **§340E-6 Notification of users and department.** (a)

Whenever a public water system:

- (1) Fails to comply with an applicable maximum contaminant level, treatment technique, or testing procedure requirement of a state primary drinking water regulation;
- (2) Fails to perform monitoring required by regulations adopted by the director;
- (3) Is subject to a variance granted for an inability to meet a maximum contaminant level requirement;
- (4) Is subject to an exemption; or
- (5) Fails to comply with the requirements of any schedule prescribed by such a variance or exemption;

the public water system shall promptly notify the department, and in the case of a violation under [paragraph (1)], the local communications media, of the conditions and the extent to which they may impose adverse effects on public health and the corrective action being taken when appropriate.

(b) Notice of any violation determined by the director as posing a serious adverse health effect as a result of short term exposure shall be given as soon as practicable, but not later than twenty-four hours after the violation.

(c) The director shall prescribe by rules the form, content, and manner for giving notice. The rules may contain such additional public notification requirements as the director determines are necessary to best effectuate the purpose of this chapter, including consumer confidence reports, and may also contain alternative notice requirements as allowed by the Federal Act. [L 1976, c 84, pt of §1; am L 1977, c 66, §2; am L 1984, c 268, §2; am L 1987, c 165, pt of §1; am L 1997, c 218, §5]

" **§340E-7 Prohibited acts.** (a) No supplier of water shall violate any rule adopted pursuant to section 340E-2.

(b) No supplier of water shall violate any condition or provision of a variance, exemption, permit, or other written authorization issued under this part.

(c) No supplier of water shall violate any requirement of an emergency plan promulgated pursuant to section 340E-5.

(d) No supplier of water shall violate any rule adopted under section 340E-6 or disseminate any false or misleading information with respect to notices required pursuant to section 340E-6 or with respect to remedial actions undertaken to



achieve compliance with state primary drinking water regulations.

(e) No person shall violate any order issued by the director pursuant to this part.

(f) No person shall cause a public water system to violate the state primary drinking water regulations.

(g) No person shall violate underground injection control rules adopted pursuant to this part.

(h) No person shall fail or refuse to comply with the director's authority to inspect the premises of a supplier of water pursuant to section 340E-4.6.

(i) No person shall install or repair any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system with any pipe, solder, flux, plumbing fittings, or fixtures that are not lead free. "Lead free" with respect to solders and flux means containing not more than 0.2 per cent lead, with respect to pipes and pipe fittings means containing not more than 8.0 per cent lead and with respect to plumbing fittings and fixtures means those in compliance with National Sanitation Foundation Standard 61, section 9. This subsection shall not apply to leaded joints necessary for the repair of cast iron pipes.

(j) No person shall violate rules on public water system capacity adopted pursuant to this part. [L 1976, c 84, pt of §1; am L 1981, c 12, §1; am L 1987, c 165, pt of §1; am L 1997, c 218, §6; am L 2001, c 81, §1]

#### **Revision Note**

In subsections (b), (e), and (g), "part" substituted for "chapter".

" **§340E-8 Penalties and remedies.** (a) Any person who violates section 340E-7 shall be administratively or civilly penalized not more than \$25,000 per day for each violation.

(b) Any person who wilfully violates section 340E-7(g) shall be criminally fined not more than \$25,000 per day for each violation and may be imprisoned for not more than three years.

(c) Any person may be enjoined from any violation of section 340E-7.

(d) The director may enforce this part in either administrative or judicial proceedings:

- (1) Administrative. If the director determines that any person has violated or is violating any provision of this part, any rule adopted thereunder, or any variance, exemption, permit, or other written

authorization issued pursuant thereto, the director may have that person served with a notice of violation and an order. The notice shall specify the alleged violation. The order may require that the alleged violator do any or all of the following: cease the violation, pay an administrative penalty as specified in this section, or appear before the director at a time and place specified in the order and answer the charges complained of. The order shall become final twenty days after service unless within those twenty days the alleged violator requests in writing a hearing before the director. Upon the request, the director shall specify a time and place for the alleged violator to appear. When the director issues an order for immediate action to protect the public health from an imminent and substantial danger, the department shall provide an opportunity for a hearing within twenty-four hours after service of the order. After a hearing pursuant to this subsection, the director may affirm, modify, or rescind the director's order as the director deems appropriate. The director may institute a civil action in any environmental court of appropriate jurisdiction for the enforcement of any order issued pursuant to this subsection. In any judicial proceeding to collect the administrative penalty imposed, the director need only show that:

- (A) Notice was given;
- (B) A hearing was held or the time granted for a hearing expired without a request for a hearing;
- (C) The penalty was imposed; and
- (D) The penalty remains unpaid.

- (2) Judicial. The director may institute a civil action in any environmental court of appropriate jurisdiction for injunctive and other relief to prevent violation of this part or any order or regulation issued pursuant to this part, impose and collect civil penalties, collect administrative penalties, or obtain other relief in addition to any other remedy provided for under this section.

(e) Any person who violates section 340E-6 shall be administratively or civilly penalized not more than \$25,000 per day for each violation.

(f) Any person who fails to comply with any action taken by the director pursuant to section 340E-4 shall be civilly penalized not more than \$25,000 for each day of failure to comply. [L 1976, c 84, pt of §1; am L 1981, c 12, §2; gen ch

1985; am L 1987, c 165, pt of §1; am L 1995, c 180, §1; am L 2000, c 84, §1]

- " **[\$340E-9] Administration.** The director may:
- (1) Perform any and all acts necessary to carry out the purposes and requirements of this chapter;
  - (2) Administer and enforce the provisions of this chapter and all rules, regulations, and orders promulgated;
  - (3) Enter into agreements, contracts, or cooperative arrangements with any person;
  - (4) Receive financial and technical assistance from the federal government and other public or private agencies;
  - (5) Participate in related programs of any public or private agencies or organizations;
  - (6) Establish adequate fiscal controls and accounting procedures to assure proper disbursement of an accounting for funds appropriated or received for the purpose of carrying out this chapter;
  - (7) Delegate those responsibilities and duties as appropriate for the purpose of administering the requirements of this chapter;
  - (8) Establish and collect fees for conducting plan reviews, inspections and laboratory analyses as necessary; and
  - (9) Prescribe such regulations as necessary to carry out the director's function under this chapter. [L 1976, c 84, pt of §1; gen ch 1985]

**"[PART II.] STATE INTERIM ACTION LEVELS  
FOR CONTAMINANTS IN WATER**

**[\$340E-21] Definitions.** As used in this part, unless the context requires otherwise:

"EPA risk assessment guidelines" means guidelines developed by the United States Environmental Protection Agency for the assessment of health risks from environmental pollutants and includes, but is not limited to, Guidelines for Estimating Exposures, Guidelines for Mutagenicity Risk Assessment, Guidelines for the Health Assessment of Suspect Developmental Toxicants, and Guidelines for the Health Risk Assessment of Chemical Mixtures.

"Federal drinking water guidelines" means a proposed maximum contamination level, health advisory, or other guidance developed by the United States Environmental Protection Agency to assist a state agency in responding to a contaminant in

drinking water for which no maximum contamination level (MCL) is established.

"Interim action level" means a level established by the director of health for a contaminant in a public drinking water supply for which a maximum contamination level is not established by the EPA.

"Reliable analytical data" means information approved by the director as indicating the presence of a contaminant in a water sample at or above the limit of detection and developed according to generally recognized standards of good field practices and good laboratory practices for sampling and analysis of contaminants in water. [L 1987, c 297, pt of §2(2)]

" **[§340E-22] Establishment of interim action levels.** (a) The director, upon identifying a contaminant in a public water system that may present an unacceptable health risk to the public, shall establish as soon as practicable, interim action levels for those contaminants for which maximum contamination levels have not been established by the United States Environmental Protection Agency. The director may utilize federal drinking water guidelines as interim action levels when appropriate.

(b) The director shall establish an interim action level at a level below which risks have been determined by the director to be acceptable. EPA risk assessment guidelines may be utilized to determine health risks from a chemical contaminant. When establishing an interim action level the director shall also consider water treatment or alternate remedial actions.

(c) The director shall distribute to appropriate government and private institutions for review and comment a draft risk assessment document describing the technical and scientific methods and parameters utilized to determine an interim action level. The director shall consider all comments received relating to the risk assessment and revise an interim action level if necessary. The draft risk assessment and all comments received by the director shall be made available to the public for review.

(d) The director, upon designating an interim action level for a contaminant, shall take such actions necessary to protect the health of the public including, but not limited to:

- (1) Issuing guidance as may be necessary to protect the health of persons (including travelers) who are or may be users of a contaminated water supply system.
- (2) Notifying the public through the media of the establishment of an interim action level. [L 1987, c 297, pt of §2(2)]

" **[\$340E-23] Rules.** The director, by rules adopted under chapter 91, may establish state standards which shall supersede interim action levels. As soon as practicable and within two years of the establishment of an interim action level, and every two years thereafter until a federal or state standard is established to supersede an interim action level, the director of health shall review all available scientific information to determine whether there is sufficient basis to establish a state standard to supersede an interim action level. Prior to adopting rules to establish state standards, the director shall conduct at least one public hearing to provide information to the public on the nature of the chemical contaminant under review and to afford the public an opportunity to present information and concerns to the department relating to the chemical contaminant under review. [L 1987, c 297, pt of §2(2)]

" **[\$340E-24] Notification of contamination of underground sources of drinking water and other sources of public drinking water.** (a) Suppliers of water shall notify the department by written communication of any previously undetected chemical contamination of any underground sources of drinking water or other sources of public drinking water supply within seven days of detecting the presence of a contaminant. The written communication shall contain information known to the supplier on the level of detection, location (including depth of the source), date, well construction, and analytical method used, including information on the precision, accuracy, and limit of detection of the method and any quality assurance and control procedures.

(b) The director shall notify the public through the media, and the affected water supplier by written communication, of the presence of any previously undetected chemical contaminant in underground sources of drinking water or in any public water supply within fourteen days of the development of reliable analytical data by the department of health laboratory or receipt of reliable analytical data indicating to the director that the contaminant has been detected by another laboratory. [L 1987, c 297, pt of §2(2)]

" **[\$340E-25 Preemption.]** No provision of this part shall in any way modify or preempt the public notification requirements as identified by state or federal regulation pertaining to violation of the safe drinking water regulations. [L 1987, c 297, §3]

"[PART III.] DRINKING WATER FINANCING

**§340E-31 Definitions.** As used in this part, unless the context otherwise requires:

"American Recovery and Reinvestment Act of 2009" means the federal law, Public Law 111-5, making appropriations for various purposes, including job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization purposes.

"Drinking water fund" means the drinking water treatment revolving loan fund established by section 340E-35. [L 1997, c 218, pt of §2; am L 2009, c 98, §4]

" **[§340E-32] Declaration of policy.** The State's policy is to protect and improve drinking water quality by financing eligible projects consistent with applicable federal and state laws. [L 1997, c 218, pt of §2]

" **[§340E-33] Powers and duties.** (a) The director may approve grants, loans, and other financial assistance consistent with this part and the Federal Act to eligible public water systems in the State.

(b) The director may enter into any necessary or required agreement and give or make any necessary or required assurance, designation, or certification with or to any person in order to receive payments or to make or provide any financial assistance in conformance with the Federal Act.

(c) The director may enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept drinking water fund capitalization and other grants. Federal capitalization grants shall be used only for the drinking water fund and other uses allowed by the Federal Act (e.g., section 1452(a)(2), (a)(3), (d), (g)(2), and (k) of the Federal Act).

(d) The director may adopt rules pursuant to chapter 91 for the purposes of this part, including rules setting fees for loans and other financial assistance issued through the drinking water fund and penalties for default of loans or other financial assistance.

(e) The director shall establish fiscal controls and accounting procedures at least sufficient to assure proper accounting for appropriate accounting periods of payments, disbursements, revenues, and fees received and made for fund balances at the beginning and end of the accounting period. Federal funds in the drinking water fund shall be kept in a separate account or series of accounts from the account or accounts for state funds in the drinking water fund.

(f) The director may perform any act considered reasonably necessary, advisable, or expedient for the administration of this part or the advancement of the purposes of this part.

(g) The director may create one or more separate accounts or subaccounts within the drinking water fund and may specify any conditions applicable to the transfer of moneys and securities among such accounts and subaccounts.

(h) The director may create one or more separate accounts or subaccounts outside the drinking water fund to handle funds for programs and administrative expenses consistent with the Federal Act, and the director may specify any conditions applicable to the transfer of moneys and securities among such accounts and subaccounts and to the drinking water fund.

(i) Moneys in accounts outside the drinking water fund may be placed in interest bearing investments or otherwise invested at the discretion of the director until such time as the moneys may be needed. All interest accruing from the investment of these moneys shall be credited to accounts established under this part as the director considers appropriate.

(j) Not less than twenty days prior to the convening of each regular session of the legislature, the director shall submit to the legislature a financial report addressing the operations of the drinking water fund during the last completed fiscal year, including information on each grant, loan, or other financial assistance made during that year. The report shall include:

- (1) The name of the recipient;
- (2) The effective date of the financial assistance;
- (3) The amount provided; and
- (4) The intended or actual use of the funds. [L 1997, c 218, pt of §2]

" **[\$340E-33.5] Use of American Recovery and Reinvestment Act of 2009 and other federal moneys.** (a) The director may provide financial assistance to public water systems for the construction of necessary drinking water infrastructure projects, through the drinking water fund, using moneys from the American Recovery and Reinvestment Act of 2009 and other applicable federal acts.

(b) The director may establish a separate account within the drinking water fund and assign to that account federal moneys appropriated under federal laws that authorize principal forgiveness, zero and negative interest loans, and grants, including the American Recovery and Reinvestment Act of 2009 and other applicable federal acts. The director may use those moneys and in so doing may include additional requirements and subsidization not applicable to the remainder of the drinking

water fund, including forgiveness of principal, zero and negative interest loans, and grants to public water systems that meet eligibility requirements for the drinking water fund.

(c) The director shall certify that a project is entitled to priority over other eligible projects on the basis of drinking water quality and financial needs, as well as a preference to those projects that can be started and completed expeditiously as stipulated under the American Recovery and Reinvestment Act of 2009 and other applicable federal acts.

(d) Among eligible projects, the director may also give priority to projects that incorporate renewable energy, energy efficiency, and conservation measures in drinking water infrastructure, to the extent allowed by federal law.

(e) Each project receiving financial assistance shall conform with the conditions for drinking water project financial assistance under section 340E-37(a). [L 2009, c 98, §2]

" **[\$340E-34] Grants.** (a) The director may make grants to public water systems from state funds as authorized and appropriated by the legislature for the construction of necessary water treatment works or other related drinking water projects. Grants shall not be made from the drinking water fund.

(b) The director shall coordinate the granting of state funds with available federal funds for the same purpose. Grants involving federal funds shall be consistent with federal law.

(c) The director may allocate grants to drinking water projects on the basis of existing health concerns. No grant shall be made for any project unless:

- (1) The project conforms with the state grant plan to provide safe drinking water;
  - (2) The project is certified by the director as being entitled to priority over other eligible projects on the basis of financial as well as drinking water quality needs; and
  - (3) In the case of water treatment works, the applicant for the grant commits to maintain the water treatment plant efficiently and properly after its construction.
- [L 1997, c 218, pt of §2]

" **[\$340E-35] Drinking water treatment revolving loan fund; establishment, purpose.** There is established in the state treasury a fund to be known as the drinking water treatment revolving loan fund to be administered by the director. The fund shall be administered, operated, and maintained to remain available in perpetuity to provide loans and other financial assistance to eligible public water systems for projects or



activities eligible under this part and the Federal Act. [L 1997, c 218, pt of §2]

" **§340E-36 Drinking water fund; uses and limitations; types of assistance.** (a) Moneys in the drinking water fund may be used only as allowed and limited by sections 1452(a)(2) and (3), 1452(d), and 1452(k)(1) and (2) of the Federal Act and this part. Such uses include loans and other financial assistance for facilitating compliance with applicable national primary drinking water regulations or otherwise significantly furthering the health protection objectives of the Federal Act.

- (b) Moneys in the drinking water fund may be used only:
- (1) To provide, make, and condition loans;
  - (2) To buy or refinance debt obligations of a municipality, as defined by the Federal Act, at or below market interest rates if the debt obligation is incurred after July 1, 1993;
  - (3) To guarantee or purchase or provide insurance for a public water system obligation if such action would improve credit market access or reduce interest rates applicable to the obligation;
  - (4) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of the bonds will be deposited into the drinking water fund;
  - (5) To earn interest on the amounts deposited into the drinking water fund; and
  - (6) To provide interest rate subsidies by depositing revolving fund moneys into interest bearing accounts in participating financial institutions that issue loans for the implementation of eligible projects under section 340E-35.

(c) Five per cent of the moneys in the drinking water fund shall be set aside for use in the geographic areas of the State serviced by water catchment systems for the purposes identified in subsection (b); provided, if no such area qualifies for use of the moneys in the drinking water fund, the moneys shall no longer be set aside and revert back as unrestricted moneys to the fund. [L 1997, c 218, pt of §2; am L 2002, c 132, §2]

" **[\$340E-37] Drinking water fund; conditions.** (a) No loan or other financial assistance shall be made from the drinking water fund for any project unless:

- (1) The project conforms with the state intended use plan to provide safe drinking water which meets section 1452 of the Federal Act;

- (2) The project is certified by the director as being entitled to priority over other eligible projects on the basis of financial as well as drinking water quality needs; and
  - (3) In the case of water treatment works, the applicant for the loan or other financial assistance commits to maintain the water treatment works efficiently and properly after its construction.
- (b) Except for subsidies to disadvantaged communities made consistently with section 1452(d) of the Federal Act, all loans from the drinking water fund shall:
- (1) Be made at or below market interest rates, including interest free loans;
  - (2) Require payments of principal and interest with repayment commencing not later than one year after completion of the project for which the loan is made, and be fully amortized not later than twenty years after project completion, except that for disadvantaged communities an extended repayment term may be provided as allowed by the Federal Act;
  - (3) Require the recipient of the loan to establish a dedicated source of revenue (or in the case of a privately owned system, demonstrate that there is adequate security) for the repayment of the loans. For a county, the dedicated source may be a pledge of the county's full faith and credit (a general obligation payable from its general fund), of special assessments, of revenues from an undertaking, system or improvements, including user charges, or of any other source of revenue; and
  - (4) Be repaid, both principal and any interest, to the credit of the drinking water fund. [L 1997, c 218, pt of §2]

" **[\$340E-38] Drinking water fund; deposits.** The following may be deposited into the drinking water fund:

- (1) Federal capitalization grant funds and other federal grants, loans, or appropriations;
- (2) Appropriations by the legislature to the drinking water fund;
- (3) Payments of principal and interest, matching funds, and other amounts made by public water systems under loans or other agreements entered into with the director under this part;
- (4) Fees for loans and other items;
- (5) Moneys paid to the drinking water fund as a result of court-ordered awards of judgments;

- (6) Moneys paid to the drinking water fund in court-approved or out-of-court settlements;
- (7) All interest attributable to investment of moneys deposited in the drinking water fund; and
- (8) All moneys allotted or directed to the drinking water fund from other sources. [L 1997, c 218, pt of §2]

" **[\$340E-39] Drinking water fund; fees.** (a) If established, fees shall cover the costs of current activities, including the issuance of loans and other financial assistance, monitoring of loans and other financial assistance repayments and conditions, technical review of the planning and design documents, monitoring of construction activities, conducting operation and maintenance inspections of drinking water facilities, and activities of the drinking water fund under the Federal Act and shall be used exclusively to support the activities of the drinking water fund.

(b) All moneys collected as fees shall be deposited into an administrative expense account or accounts as needed to comply with the Federal Act and shall be used exclusively to support the activities of the drinking water fund. [L 1997, c 218, pt of §2]

" **[\$340E-40] Drinking water fund; interest and investment on accounts.** Moneys in the drinking water fund shall be placed in interest bearing investments or otherwise invested at the discretion of the director until such time as the moneys may be needed. All interest accruing from the investment of these moneys shall be credited to the drinking water fund. [L 1997, c 218, pt of §2]

" **[\$340E-41] Compliance.** The failure or inability of any public water system to receive funds under this part or any other loan or grant program, or any delay in obtaining the funds, shall not alter the obligation of the public water system to comply in a timely manner with all applicable requirements of this chapter or rules adopted under this chapter. [L 1997, c 218, pt of §2]