



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
WATER

December 23, 1993

**SRF 94-02**

MEMORANDUM

SUBJECT: Approval of Ohio State Revolving Fund Linked Deposit Proposal

FROM: Michael B. Cook, Director /s/  
Office of Wastewater Enforcement and Compliance

TO: Dale S. Bryson, Director  
Water Division, Region V

This is in response to a request by Gene Wojcik of your staff for Headquarters' concurrence on Ohio's proposed Linked Deposit Program. The proposal would allow funds from the Ohio State Revolving Fund (SRF) to be invested in participating banks by purchasing certificates of deposit (CDs). The banks in turn would make loans to farmers for nonpoint source (NPS) activities in an EPA approved section 319 State NPS Management Program. We commend the State for its creativity in proposing an approach which will effectively support implementation of high priority NPS activities.

In reviewing Ohio's proposed program, a number of issues arose in regard to compliance with title VI. Two issues which were of particular concern to us were compliance with sections 603(d)(6) and 602(b)(4). We have determined that the proposal is consistent with the intent and spirit of title VI.

Section 603(d)(6) allows SRF funds to be used to earn interest on fund accounts. The purchase of the Linked Deposit CDs is an eligible use of SRF funds. However, the primary purpose of the SRF is to make loans, not to earn interest. Although SRFs may earn interest, the Agency's interpretation of the Clean Water Act does not support long term investment activities by an SRF simple for the purpose of earning interest. To be approvable, SRF proposals involving long term investments must propose direct or indirect connections for the provision of authorized financial assistance to eligible parties for activities eligible under title VI. In the case of a Linked Deposit approach, the investment activity of the SRF results in the provision of bank loans for activities eligible under title VI. Moreover, through the agreement between the Ohio SRF and the banks, the bank loans will be treated essentially as though they were SRF loans. Therefore, the linked deposit provision allays potential concerns about the long-term investment of SRF funds independent of achievement of water quality objectives.

Section 602(b)(4) requires that all funds in the fund be expended in an expeditious and timely manner. We have determined that the purchase of the Linked Deposit CDs represents an expenditure and is consistent with this requirement.

One matter which surfaced in our review was the appropriate State and Agency oversight of the banks' activities to assure compliance with the general intent and specific requirements of title VI. To prevent possible abuses, we believe several potential concerns should be addressed.

We concur in your proposed approval of the Ohio Linked Deposit Program subject to the following items being explicitly addressed or covered, perhaps most appropriately through an amendment to the Ohio SRF Operating Agreement:

1. All activities funded through the Ohio Linked Deposit Program are in an EPA approved State section 319 NPS management program.
2. The State establishes specific protocols for its oversight of bank loans to assure compliance with applicable provisions of title VI and other Federal authorities, including project eligibility (e.g., concentrated animal feeding operations and other activities not eligible for a direct SRF loan could not be funded under the Linked Deposit approach).
3. To be able to make cash draws from the EPA-ACH for linked deposits, the State's SRF must comply with the general cash draw rules, as found in 40 CFR 35.3155(d), in the following manner, except with respect to use of a reserve fund which is apart of a leveraged SRF program:
  - (a) The State must establish an estimated schedule of binding commitments and EPA-ACH disbursements in its annual intended use plan, based on estimates of purchases of certificates of deposits and completion of construction of individual projects;
  - (b) Disbursements to certificates of deposits and cash draws from the EPA-ACH and State matching funds must be performed in the following manner:
    - (1) Upon investment in a certificate of deposit with a participating bank for an eligible project, the SRF will draw monies from its repayments fund to invest in the certificate of deposit;
    - (2) At the completion of construction by the individual linked deposit loan recipient, the bank will inform the State of the completion of construction and the final amount of the loan, based on the total of

disbursements for incurred costs made from the bank's loan to the loan recipient;

- (3) The State will then make a cash draw request to the EPA-ACH, including appropriate documentation of incurred project costs for an amount up to the final loan amount; and
- (4) The EPA-ACH cash draw will be deposited into the State's SRF repayments fund. An accounting will be made for the Linked Deposit CD to show the amount of Federal funds drawn against the certificate of deposit;

- (c) Cash draws for linked deposits and all other cash draws will not exceed the amount of payments made to the EPA-ACH;
- (d) Proportionality of EPA-ACH total cash draws to State funds draws must be maintained; and
- (e) Reserve account funds (including Federal capitalization grant and State funds) associated with a leveraged SRF program may be invested in a manner consistent with the Linked Deposit proposal if allowed by the terms of the bond instrument and consistent with applicable State and Federal laws.

4. The standard agreement between the Ohio SRF and the participating banks contain the following provisions:

- (a) The timing of the purchase of the Linked Deposit CDs coincides as closely as feasible with the bank's execution of the loan agreements with the farmers. Execution of the bank loans would be equivalent to SRF binding commitments;
- (b) The purchase of Linked Deposit CDs are not deemed to be a guarantee of any payment due to the bank from any borrower of a Linked Deposit loan. The bank assumes all risk for repayment of such loans;
- (c) Whenever the amount of SRF funds invested in Linked Deposit CDs exceeds the amount insured by FDIC or FSLIC, the participating bank must sufficiently collateralize the uninsured portion to assure that the SRF investment is not placed at risk;
- (d) The SRF recaptures Linked Deposit CDs in excess of the amount of Linked Deposit loans in a timely manner in order to minimize loss of

interest to the SRF. The value of Linked Deposit CDs should be equivalent to the amount of the loan portfolio; if the loan amount decreases, the CDs would be adjusted;

- (e) Profits earned by the bank from the Linked Deposit loan program do not exceed profits which are usual and customary for comparable loan programs;
  - (f) The interest rate reduction provided by the banks to the farmers equals the reduction of the interest rate paid to the SRF on the Linked Deposit CDs;
  - (g) The frequency and timing of loan repayments by the farmers to the banks coincides as closely as feasible with the timing of payments on the Linked Deposit CDs; and
  - (h) Loan origination, closing, and other administrative fees charged by the bank do not exceed the usual and customary fees charged by the bank on comparable loans. The bank does not obtain such fees from SRF funds or deduct them from amounts due to be paid by the bank to the SRF.
5. The State includes information about proposed Linked Deposit activities in its Intended Use Plan and reports on its transactions and environmental results in its Annual Reports to the Agency. The Agency reviews Linked Deposit transactions as part of its Annual Review in a manner consistent with its usual oversight of SRF activities.

If you have further questions, please contact me or have your staff call Michael J. Quigley, Director, Municipal Support Division, Office of Wastewater Enforcement and Compliance, at (202) 260-5859.

cc: Todd Cayer  
Gene Wojcik  
Water Management Division Directors  
Regions I-4, 6-10  
SRF Coordinators  
Regions 1-4, 6-10