Diane Cutler

From: Clerk <clerk@greenleaf-idaho.us>
Sent: Thursday, April 24, 2025 11:18 AM
To: Diane Cutler
Subject: Re: Comment for Drinking Water and Wastewater Loans: Docket No. 58-0112-2501

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Hi Diane!

Project specific performance bonds for design as well as construction may be an alternative to OPPI coverage.

Thank you,

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On 4/23/2025 2:29 PM, Greenleaf City Clerk wrote:

> Hi Diane!
>
> I attended the on-line Draft 1 meeting on 17 April 2025, and am very appreciative of DEQ's efforts in this process. Thank you for the opportunity to provide comment.
>
> Negotiated rule draft 1 currently shows provision on p.21 under 050.05.d requiring that the "...prime engineering firm(s) and their principals retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors and omissions of a professional nature. The total aggregate of the engineer's professional liability insurance shall be one hundred thousand dollars ($100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project phases, whether or not such services or phases are state funded, until the certification of project performance is accepted by the Department."
>
> Negotiated rule draft 1 would change "shall" to "must" and add a waiver process by which an engineer may request to reduce the coverage amount of this liability insurance.
>
> The cost of professional liability insurance is a valid concern for design professionals, so the request for a waiver process is understandable. However, while it is important that DEQ funded water and wastewater projects include a requirement for engineering

professional liability insurance, I would submit that requirement of this policy is not providing the protection of the public dollar that we think it provides.

Let me digress a bit to provide context for the recommendation below.

It is my privilege to serve as the city clerk of one of the 75% of cities in Idaho that has a population under 3,000, and I am now in my 21st year in this position. My city performed a major water project from 2006 to 2010 funded primarily by USDA-RD bonds which took the system from one that only provided potable water to a system that provides fire-flows - the backbone of the old system used four-inch main, where six-inch is necessary to adequately feed a fire hydrant. The city estimates that the community's water system was 95%+ replaced in this project, giving the city in essence a 'new' water system. My city constructed a completely new sanitary sewer collection system and wastewater treatment plant (WWTP) project from 2009 to 2013 funded primarily through the DEQ revolving fund which literally took the community from septic tanks & drain-fields to a new collection system with modern materials and an efficient, resilient, and expandable oxidation ditch WWTP design with summer land application and winter discharge of treated water. The community pays dearly through user fees for the financed debt on these projects, but also has the benefit of well designed and well maintained systems with capacity to accommodate growth.

Not all Idaho communities are so fortunate. Within the past twenty years, I can immediately think of three cities (Parma, Emmett, and McCall - and there are probably multiple others I'm not aware of...) that I believe continue to suffer financially from multi-million dollar design-build water or wastewater infrastructure projects that didn't work as intended at end of construction. It may have been the fault of the the engineer, data provided by the city, or the contractor (more likely a combination of factors) and finger-pointing doesn't matter at the end of the day because professional liability and contractor liability insurance coverage is insufficient to cover re-design and corrective measures to bring the new multi-million dollar facility into functional status. Nobody involved wants to see the community pay debt service for a new facility that doesn't work, and the city and it's funding partners also have the task of finding a path forward to afford to fix it. DEQ's engineering design review for approval requirement has value, but design review has not, and cannot be expected to, protect against this type of failure.

I would recommend addition of project-specific insurance to safeguard DEQ drinking water and wastewater loan funded projects over a set threshold (perhaps $2 million). A portion of loan funding could be earmarked for this insurance policy outside of the loan amount provided (similar to Idaho Community Block Grant funding for a certified community block grant administrator at ten-percent of grant amount, above the grant awarded and realized by the grant recipient) to protect the publicly funded project through an Owner's Protective Professional Indemnity (OPPI) or equivalent project-specific insurance policy to provide financial resource to the owner of the project to fix catastrophic design-build issues that are financially too large for affordable professional liability and contractor liability insurance carried by engineering and construction firms.

Respectfully submitted,

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