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CHAPTER Env-Dw 1300 ADMINISTRATIVE PROCEDURES FOR GRANTS AND LOANS FROM THE DRINKING WATER AND GROUNDWATER TRUST FUND

Statutory Authority: RSA 485-F:3, II

PART Env-Dw 1301 PURPOSE; APPLICABILITY; USE OF STANDARD TERMS

Env-Dw 1301.01 Purpose. The purpose of this chapter is to support the work of the drinking water and groundwater advisory commission (commission) by establishing criteria and procedures for:

- (a) Administering a competitive grant program for drinking water protection projects; and
- (b) Administering the revolving loan fund established by RSA 485-F.

Source. #12903, eff 10-23-19

Env-Dw 1301.02 Applicability. This chapter shall apply to any entity seeking financial assistance from the drinking water and groundwater trust fund (DWGTF).

Source. #12903, eff 10-23-19

Env-Dw 1301.03 Standard Terms. Any terms used in this chapter that are subject to Env-Dw 101.03 or that are defined in Env-Dw 103 shall have the meaning established therein.

Source. #12903, eff 10-23-19

PART Env-Dw 1302 CHAPTER-SPECIFIC DEFINITIONS

Env-Dw 1302.01 “Administrative costs” means expenses associated with managing DWGTF projects. The term includes but is not limited to costs for engineering and other consultants, environmental and technical reviews of proposed projects, participation in state overview inspections, and accounting and disbursement functions.

Source. #12903, eff 10-23-19

Env-Dw 1302.02 “Allonge” means an amendment to initial loan documents in which the final project cost and repayment terms are established.

Source. #12903, eff 10-23-19

Env-Dw 1302.03 “Applicant” means an entity that files a final application for financial assistance from the DWGTF.

Source. #12903, eff 10-23-19

Env-Dw 1302.04 “Application” means the written document(s), with attachments, through which financial assistance is requested. The term includes the final application.

Source. #12903, eff 10-23-19

Env-Dw 1302.05 “Asset maintenance and renewal plan” means a plan developed and implemented by a recipient to maintain and eventually replace water system infrastructure funded in whole or in part by the DWGTF.

Source. #12903, eff 10-23-19

Env-Dw 1302.06 “Authorized representative” means an individual authorized by the applicant to sign documents associated with applying for and receiving funds from the DWGTF.

Source. #12903, eff 10-23-19

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Env-Dw 1302.07 “Construction” means the erection, building, acquisition, alteration, remodeling, improvement, or extension of any components of a water system.

Source. #12903, eff 10-23-19

Env-Dw 1302.08 “Department” means the department of environmental services.

Source. #12903, eff 10-23-19

Env-Dw 1302.09 “Disbursement” means a transfer of funds from the DWGTF to a recipient.

Source. #12903, eff 10-23-19

Env-Dw 1302.10 “DWGTF attorney” means the attorney(s) under contract to the department for the purpose of providing legal review of initial loan documents and allonges and other legal services associated with loans to non-governmental entities.

Source. #12903, eff 10-23-19

Env-Dw 1302.11 “DWGTF financial advisor” means the individual or entity under contract to the department for the purpose of assessing the financial risk of providing financial assistance to non-governmental entities.

Source. #12903, eff 10-23-19

Env-Dw 1302.12 “Eligible costs” means project costs that are eligible for funding from the DWGTF, in accordance with RSA 485-F, as determined by the commission.

Source. #12903, eff 10-23-19

Env-Dw 1302.13 “Eligible entity” means an entity that has been determined by the commission to be eligible for financial assistance under RSA 485-F.

Source. #12903, eff 10-23-19

Env-Dw 1302.14 “Eligible project” means a project that has been determined by the commission to be eligible for financial assistance under RSA 485-F.

Source. #12903, eff 10-23-19

Env-Dw 1302.15 “Engineering services” means consultations, investigations, reports, or other services relating to the design or construction, or both, of projects for which RSA 310-A requires a licensed professional engineer.

Source. #12903, eff 10-23-19

Env-Dw 1302.16 “Environmental review” means an analysis of the potential impact on the human and natural environment of a project for which funding from the DWGTF is sought.

Source. #12903, eff 10-23-19

Env-Dw 1302.17 “Excusable delay” means a delay that is beyond the recipient’s control in beginning or completing the planning, design, construction, or implementation of a project, such as a delay caused by an act of nature or war.

Source. #12903, eff 10-23-19

Env-Dw 1302.18 “Final project cost” means the dollar amount of eligible project expenditures plus, for financial assistance in the form of a loan, any unpaid interest on the loan accrued during project planning, design, or construction, or any combination thereof.

Source. #12903, eff 10-23-19

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Env-Dw 1302.19 “Financial assistance” means funds provided from the DWGTF in the form of loan or grant, or a combination thereof, to pay in whole or in part for a project selected for funding by the commission.

Source. #12903, eff 10-23-19

Env-Dw 1302.20 “Financial assistance agreement” means the contract between the state and a recipient that establishes the rights and obligations of the state and the recipient relative to financial assistance from the DWGTF. The term includes original loan agreements, supplemental loan agreements, initial loan documents, allonges, and grant agreements.

Source. #12903, eff 10-23-19

Env-Dw 1302.21 “Governing body” means the group of individuals that has the authority and responsibility to authorize the applicant to enter into contracts and expend funds. The term applies to governmental entities as well as non-governmental entities.

Source. #12903, eff 10-23-19

Env-Dw 1302.22 “Governmental entity” means any of the following that has responsibility for providing drinking water for public consumption or otherwise funding a water system:

- (a) Any state agency, board, or commission;
- (b) Any political subdivision of the state, including but not limited to a county, city, town, or district; and
- (c) Any other public body created under state law.

Source. #12903, eff 10-23-19

Env-Dw 1302.23 “Grant agreement” means the financial assistance agreement between the state and a recipient through which the state agrees to provide grant funds approved by the commission from the DWGTF to the recipient and the recipient agrees to use the grant funds as specified in its application as approved by the commission.

Source. #12903, eff 10-23-19

Env-Dw 1302.24 “Infrastructure” means all structures and all mechanical and electrical equipment that connect a source of water to end users in a water system, including but not limited to all sources, treatment, storage, and distribution facilities and the land necessary therefor.

Source. #12903, eff 10-23-19

Env-Dw 1302.25 “Infrastructure project” means a project intended to control, improve, or develop a water system’s source of water or its infrastructure, including the requisite planning, land acquisition, design, and construction.

Source. #12903, eff 10-23-19

Env-Dw 1302.26 “Initial loan documents” means the initial financial assistance agreement between the state and a non-governmental recipient through which the state agrees to provide loan funds approved by the commission from the DWGTF to the recipient and the recipient promises to use the funds as specified in its application as approved by the commission and to repay the funds to the DWGTF.

Source. #12903, eff 10-23-19

Env-Dw 1302.27 “Initiation of operation” means the date on which an infrastructure project that was funded in whole or in part using funds from the DWGTF is placed into use for the purposes for which it was intended.

Source. #12903, eff 10-23-19

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Env-Dw 1302.28 “Land acquisition” means the purchase of an interest in land that is needed to complete an eligible project, whether in fee or by easement. The term includes all related costs as determined by the commission to be eligible.

Source. #12903, eff 10-23-19

Env-Dw 1302.29 “Maintenance” means actions taken to preserve the functional integrity and efficiency of infrastructure. The term includes preventive maintenance, corrective maintenance, and replacement of equipment and other infrastructure components, including but not limited to roofing, signs, and fences.

Source. #12903, eff 10-23-19

Env-Dw 1302.30 “Operation” means control of the processes and equipment that make up the water system. The term includes financial and personnel management, records, laboratory control, process control, safety, and emergency operation planning.

Source. #12903, eff 10-23-19

Env-Dw 1302.31 “Operation and maintenance” means activities required to ensure the safe, dependable, and economical function of a water system.

Source. #12903, eff 10-23-19

Env-Dw 1302.32 “Original loan agreement” means the initial financial assistance loan agreement between the state and a governmental recipient through which the state agrees to provide funds approved by the commission from the DWGTF to the recipient and the recipient promises to use the funds as specified in its application as approved by the commission and to repay the funds to the DWGTF.

Source. #12903, eff 10-23-19

Env-Dw 1302.33 “Planning” means preparing and evaluating reports and studies of alternative solutions to water system problems in order to select the most cost-effective feasible option.

Source. #12903, eff 10-23-19

Env-Dw 1302.34 “Pledge” means the act or process through which a non-governmental recipient commits, obligates, and encumbers its real or personal property or its existing or anticipated revenues to the state as security and means for repayment of the loan received by the recipient from the DWGTF.

Source. #12903, eff 10-23-19

Env-Dw 1302.35 “Project” means the drinking water infrastructure project or source water protection project, or combination thereof, to be completed with DWGTF funding.

Source. #12903, eff 10-23-19

Env-Dw 1302.36 “Project completion” means the date on which all components of a source water protection project that was funded in whole or in part using funds from the DWGTF are finished.

Source. #12903, eff 10-23-19

Env-Dw 1302.37 “Project cost” means the applicant’s total direct and incidental costs of acquiring services, materials and land, constructing infrastructure, and otherwise implementing the project for which assistance from the DWGTF is sought.

Source. #12903, eff 10-23-19

Env-Dw 1302.38 “Recipient” means an applicant that receives financial assistance from the DWGTF.

Source. #12903, eff 10-23-19

Env-Dw 1302.39 “Repayment” means the payment of principal or interest, or both, on funds received as a loan by a recipient from the DWGTF.

Source. #12903, eff 10-23-19

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Env-Dw 1302.40 “Replacement” means the installation of new or refurbished equipment, accessories, or appurtenances for existing equipment, accessories, or appurtenances that no longer perform as originally intended.

Source. #12903, eff 10-23-19

Env-Dw 1302.41 “Resident project representative” means an individual who:

- (a) Is qualified by reason of education and experience to inspect infrastructure projects; and
- (b) Reports to a licensed professional engineer if necessary based on the project and type of work to be done.

Source. #12903, eff 10-23-19

Env-Dw 1302.42 “Responsible bidder” means an entity that:

- (a) Has the technical knowledge necessary to perform the contract;
- (b) Has adequate financial resources to perform the contract;
- (c) Is able to comply with the legal and regulatory requirements associated with the contract;
- (d) Is able to deliver or otherwise perform according to the contract schedule;
- (e) Has either a history of satisfactory performance or no history of unsatisfactory performance;
- (f) Has good reputation for integrity; and
- (g) Has or can obtain necessary data, equipment, and other resources to perform the contract.

Source. #12903, eff 10-23-19

Env-Dw 1302.43 “Scheduled completion date” means the date stated in the original loan agreement, initial loan documents, or grant agreement on which the project that received DWGTF funds is intended to be placed into use for the purposes for which it was intended or otherwise completed.

Source. #12903, eff 10-23-19

Env-Dw 1302.44 “Security” means real or personal property or other collateral that is pledged by a non-governmental recipient to ensure repayment of a loan to the DWGTF.

Source. #12903, eff 10-23-19

Env-Dw 1302.45 “Source water protection project” means a project designed and intended to protect drinking water resources against future contamination through measures including but not limited to the delineation of a wellhead protection area (WPA), land acquisition, or the acquisition and elimination of potential contamination sources, as described in RSA 485-C:7, within an existing WPA, water supply watershed, or area contributing to a potential future source of water for a public water system.

Source. #12903, eff 10-23-19

Env-Dw 1302.46 “State” means the state of New Hampshire.

Source. #12903, eff 10-23-19

Env-Dw 1302.47 “Substantial completion” means that construction of the project, or a discrete part thereof, is sufficiently completed that the project or discrete part can be used for the purposes for which it is intended.

Source. #12903, eff 10-23-19

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Env-Dw 1302.48 “Supplemental loan agreement” means an amendment to the original loan agreement between the state and a governmental recipient that stipulates the final project cost and applicable repayment terms.

Source. #12903, eff 10-23-19

Env-Dw 1302.49 “User charge” means a charge levied on users of a water system for the user’s share of the cost of water system operation and maintenance, plus any allocable portion of capital improvements.

Source. #12903, eff 10-23-19

Env-Dw 1302.50 “Water system” means a “public water system” as defined in RSA 485:1-a, XV or a “privately owned redistribution system” as defined in RSA 485:1-a, XIV-a, both reprinted in Appendix B.

Source. #12903, eff 10-23-19

PART Env-Dw 1303 PROCEDURES FOR RECEIPT OF DWGTF FUNDS

Env-Dw 1303.01 Final Application and Project List Procedures.

(a) Each applicant whose project is selected by the commission to proceed to a final application who wishes to continue in the process shall complete and submit to the department a final application that meets the requirements specified in Env-Dw 1303.02.

(b) The department shall request the commission to remove a project from the commission’s final list of projects if any of the following is true:

- (1) The project is fully funded from other sources;
- (2) The project is found to be ineligible;
- (3) The applicant informs the department in writing that it does not intend to pursue financial assistance from the DWGTF; or
- (4) The applicant does not submit a final application by the deadline established by the commission.

Source. #12903, eff 10-23-19

Env-Dw 1303.02 Final Application Requirements. The application required by Env-Dw 1303.01(a) shall include the following:

(a) Such information as is required by the commission to confirm the eligibility of the entity and the project, on such forms as the commission requires;

(b) For loans:

- (1) Confirmation of the applicant’s authority to borrow as specified in Env-Dw 1303.04;
- (2) Verification of a revenue program as specified in Env-Dw 1303.07;
- (3) Proof of insurance coverage as required by the state of New Hampshire’s standard contract form P-37 or successor; and
- (4) For non-governmental entities, proof that the entity is registered with the NH secretary of state to do business in New Hampshire and is in good standing;

(c) For grants:

- (1) Confirmation of the applicant’s authority to accept grant funds as specified in Env-Dw 1303.05;
- (2) Proof of insurance coverage as required by the state of New Hampshire’s standard contract form P-37 or successor; and

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- (3) For non-governmental entities, proof that the entity is registered with the NH secretary of state to do business in New Hampshire and is in good standing;
- (d) For projects other than source water protection projects:
 - (1) Information regarding the environmental review required by Env-Dw 1305, as specified in Env-Dw 1303.06; and
 - (2) A planning document as specified in Env-Dw 1303.08.

Source. #12903, eff 10-23-19

Env-Dw 1303.03 Conditions Arising from Application; No Impact on Other Authority.

- (a) By applying for financial assistance, the applicant shall be deemed to have agreed to the following:
 - (1) From the time of a final application for a grant or loan for a project throughout all stages of construction and implementation, and at any other time while any loan from the DWGTF to the applicant is not fully repaid, the applicant shall allow the department to inspect:
 - a. The project and any and all incidental works, areas, facilities, and premises otherwise pertaining to the project for which application is made; and
 - b. Any and all books, accounts, records, contracts or other instruments, documents, and other information possessed by the applicant or its contractors, agents, employees or representatives which relate in any respect to the receipt, deposit, or expenditure of financial assistance funds; and
 - (2) After project completion, the recipient shall allow the department to conduct periodic site visits to confirm that the project is functioning as intended.

(b) Nothing in these rules shall prevent the department from exercising any inspection or other regulatory authority relative to the applicant's project or other regulated facilities conferred on the department by any provision of law.

Source. #12903, eff 10-23-19

Env-Dw 1303.04 Applicant's Authority to Borrow.

- (a) For a governmental applicant, the confirmation required by Env-Dw 1303.02(b)(1) shall consist of proof that the applicant's governing body passed or approved a valid warrant article or resolution, as applicable, that:
 - (1) Authorizes the applicant to:
 - a. Raise, appropriate, and spend the amount of funds to be requested for the identified project;
 - b. Apply for funding from the DWGTF for the identified project; and
 - c. Enter into a binding financial agreement to repay all funds that are received as a loan;
 - (2) Designates an individual, by title and name, to be the applicant's authorized representative for purposes of:
 - a. Signing and filing the application and furnishing such information, data, and documents pertaining to the application as may be required; and
 - b. If financial assistance is awarded, furnishing such information, data, and documents pertaining to disbursements of the funds;
 - (3) Identifies, by name and title, each individual who is authorized to sign the original loan agreement and supplemental loan agreement should funds be awarded; and

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- (4) Binds the applicant to operate and maintain all facilities constructed or modified with the funds received in accordance with all applicable requirements.
- (b) For a non-governmental applicant, the confirmation required by Env-Dw 1303.02(b)(1) shall consist of proof that the applicant's governing body passed a valid resolution that:
- (1) Authorizes the applicant to:
 - a. Apply for funding from the DWGTF for the identified project;
 - b. Enter into a binding contract to repay all funds that are received as a loan; and
 - c. Pledge security to the state to ensure repayment;
 - (2) Designates an individual, by title and name, to be the applicant's authorized representative for purposes of:
 - a. Signing and filing the application and furnishing such information, data, and documents pertaining to the application as may be required; and
 - b. If financial assistance is awarded, furnishing such information, data, and documents pertaining to disbursements of the funds;
 - (3) Identifies, by name and title, each individual who is authorized to sign the initial loan document, allonge, and such promissory notes and security instruments as are required to complete the pledge of security should funds be awarded; and
 - (4) Binds the applicant to operate and maintain all facilities constructed or modified with the funds received in accordance with all applicable requirements.
- (c) A non-governmental applicant shall submit with the proof required by (b), above, copies of:
- (1) The applicant's bylaws or articles of incorporation, or both, as applicable; and
 - (2) The approved minutes of the meeting at which the resolution was approved.
- (d) The proof required by (a) or (b), above, shall be in a written document that is certified and sealed by:
- (1) The town clerk or equivalent for a governmental entity; or
 - (2) The board secretary or comparable official for a non-governmental entity.
- (e) The applicant may provide the proof required by (a) or (b), above, in the format shown in the appropriate template obtained from the department.

Source. #12903, eff 10-23-19

Env-Dw 1303.05 Applicant's Authority to Accept Grant Funds.

- (a) For a governmental applicant, the confirmation required by Env-Dw 1303.02(c)(1) shall consist of proof that the applicant's governing body passed or approved a valid warrant article or resolution, as applicable, that authorizes the applicant to accept grant funds either in general or specifically from the DWGTF for the identified project.
- (b) For a non-governmental applicant, the confirmation required by Env-Dw 1303.02(c)(1) shall consist of proof that the applicant's governing body passed a valid resolution that authorizes the applicant to accept grant funds either in general or specifically from the DWGTF for the identified project.

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(c) A non-governmental applicant shall submit with the proof required by (b), above, copies of the approved minutes of the meeting at which the resolution provided pursuant to (b), above, was approved.

(d) The proof required by (a) or (b), above, shall be in a written document that is certified by:

- (1) The town clerk or equivalent for a governmental entity; or
- (2) The board secretary or comparable official for a non-governmental entity.

(e) The applicant may provide the proof required by (a) or (b), above, in the format shown in the appropriate template obtained from the department.

Source. #12903, eff 10-23-19

Env-Dw 1303.06 Report of Environmental Review. The information required by Env-Dw 1303.02(d)(1) shall be as follows:

- (a) The water system's name, mailing address, and PWS identifier;
- (b) The short title for the project;
- (c) An explanation of the need and justification for the proposed project;
- (d) A description of the scope of the proposed project, including estimated costs;
- (e) A list of each document that is available for public review that supplements the information provided pursuant to (d), above;
- (f) A summary of potential environmental impacts arising from the proposed project relative to air emissions, noise, surface water, groundwater, wetlands, wildlife, and habitat;
- (g) A summary of potential impacts on the community in terms of social and economic aspects, recreation, historic sites, and indirect impacts;
- (h) The date the applicant's governing body authorized funding for the project or is expected to authorize such funding;
- (i) A statement that the applicant agrees to publish a public notice to initiate a 30-day comment period on the report; and
- (j) An 8.5-inch by 11-inch copy of a topographic map on which the location of the project and maximum extent of disturbance are clearly marked.

Source. #12903, eff 10-23-19

Env-Dw 1303.07 Establishment and Verification of Revenue Program for Loan Repayment.

- (a) The applicant shall establish:
 - (1) For all projects that include more than just land acquisition, a schedule of user charges that is designed to generate sufficient revenues to cover operation and maintenance expenses as well as any allocable portion of capital improvements; and
 - (2) A dedicated source or sources of revenue to repay the loan.
- (b) For purposes of (a)(2), above, a revenue source shall be considered dedicated when the recipient passes or adopts an ordinance or other binding resolution committing the source of funds for repayment to the DWGTF.
- (c) The applicant's ordinance or other binding resolution dedicating a source of funding for repayment of the loan shall be in effect and binding on the applicant prior to the loan agreement taking effect.

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(d) For an applicant that is a governmental entity, the verification required by Env-Dw 1303.02(b)(2) shall be made by:

- (1) Identifying the source of repayment;
- (2) Stating whether or not the applicant has existing debt outside the New Hampshire municipal bond bank and, if so, the amount of the debt and whether the debt is rated and, if the debt is rated, the rating; and
- (3) Certifying that the applicant has the financial capability to support both the project loan repayment and continuing operation and maintenance of its water system.

(e) For an applicant that is a non-governmental entity, the verification required by Env-Dw 1303.02(b)(2) shall be made by:

- (1) Identifying the source of repayment; and
- (2) Certifying that the applicant has the financial capability to support both the project loan repayment and continuing operation and maintenance of its water system.

Source. #12903, eff 10-23-19

Env-Dw 1303.08 Planning Document. The planning document required by Env-Dw 1303.02(d)(2) shall facilitate review of the proposed project and alternatives thereto from the viewpoints of function, operation, economics, reliability, safety, efficiency, cost-effectiveness, and environmental compatibility, by providing the following:

(a) Identification of the planning area boundaries and characteristics and the existing needs related to the water system;

(b) A cost-benefit analysis of feasible water systems or conveyance alternatives capable of meeting state and federal requirements, which details all monetary costs including the present worth or equivalent annual value of all capital costs and operation;

(c) All information necessary for the design of the proposed project and alternatives;

(d) The most current estimate of project cost itemized as to major facilities or items including land acquisition costs, fees for engineering services, fees for legal services, fees for financial services, contingencies, and interest during construction; and

(e) A statement that the applicant has a program in place for funding the maintenance and eventual replacement of the funded asset, or, if there is no such program in place, a plan for developing an asset maintenance and renewal plan as part of the funded infrastructure project.

Source. #12903, eff 10-23-19

Env-Dw 1303.09 Requirements for Land Acquisition.

(a) Prior to requesting any funds for disbursement relative to any land acquisition, the recipient shall comply with the requirements listed in (b), below, provided that:

- (1) Any reference to “applicant” or “grantee” shall mean recipient; and
- (2) Any reference to Env-Dw 1002.19 shall mean Env-Dw 1303.09.

(b) The requirements for which (a), above, requires compliance shall be as follows:

- (1) Env-Dw 1002.21 Property Survey Requirements;

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- (2) Env-Dw 1002.22 Appraisal Requirements, except that the date referenced in Env-Dw 1002.22(e) shall be no earlier than one year prior to the date of a binding purchase and sale agreement;
- (3) Env-Dw 1002.23 Title Examination and Opinion Requirements;
- (4) Env-Dw 1002.24 Conservation Interest Instrument Requirements, except that land surface alterations may occur in conjunction with wildlife habitat management in addition to the reasons listed in Env-Dw 1002.24(b)(2);
- (5) Env-Dw 1002.25 Snowmobile Trail Plan Approval;
- (6) Env-Dw 1002.26 Stewardship Requirements; and
- (7) Env-Dw 1002.27 Final Approval, Execution, and Deed Recordation.

Source. #12903, eff 10-23-19

PART Env-Dw 1304 FINANCIAL ASSISTANCE; PAYMENTS; ACCOUNTING

Env-Dw 1304.01 Types of Assistance and Related Conditions.

- (a) Financial assistance awarded by the commission shall be in one of the following forms:
 - (1) An original loan;
 - (2) A grant; or
 - (3) A combination of a grant and a loan.
- (b) Loans awarded by the commission shall be made only with the following conditions:
 - (1) A loan shall have a term specified in the final application;
 - (2) Principal and interest payments shall commence within one year of project completion;
 - (3) The recipient has established a dedicated source of revenue for repayment of the loan in accordance with Env-Dw 1303.07;
 - (4) The recipient has completed all necessary documentation and agreements required by the department to issue a loan; and
 - (5) The loan has been approved by the governor and council.
- (c) Grants awarded by the commission shall be made with the following conditions:
 - (1) The recipient has completed all necessary documentation and agreements required by the department to issue a grant; and
 - (2) The grant has been approved by the governor and council.

Source. #12903, eff 10-23-19

Env-Dw 1304.02 Original Loan Agreements (OLAs) for Governmental Entities.

- (a) Following acceptance of an application for a loan from a governmental entity, the department shall prepare an original loan agreement (OLA) that contains the following provisions:
 - (1) The loan amount;
 - (2) The interest rate for the loan determined by the commission, provided that if the commission has established an interest rate that can vary over time, the rate shall be the rate in effect at the time the OLA is transmitted to the recipient;

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- (3) The length of the repayment term;
 - (4) A description of the project;
 - (5) Authorization for representatives of the department to examine any of the loan recipient's records that pertain to transactions relating to the loan agreement, construction contracts, engineering contracts, or other consulting contracts for the purpose of inspection, audit, and copying during normal business hours;
 - (6) For all projects that include more than just land acquisition, a requirement for the recipient to develop and adhere to an asset maintenance and renewal plan for the funded improvements; and
 - (7) Any other provision(s) required by state or federal law in order for the agreement to be valid.
- (b) The department shall transmit the OLA to the recipient for review. If the recipient wishes to receive the funds, the recipient shall sign and date the OLA and return the signed OLA to the department.
- (c) Upon receipt of a signed OLA, the department shall sign the OLA and submit the OLA to the governor and executive council for approval.
- (d) If approved by the governor and executive council, then:
- (1) The OLA shall be effective upon approval; and
 - (2) The department shall send a copy of the approved OLA to the recipient.

Source. #12903, eff 10-23-19

Env-Dw 1304.03 Initial Loan Documents (ILD) for Non-Governmental Entities.

- (a) Following acceptance of an application for a loan from a non-governmental entity, the department shall send the applicant's financial information to the DWGTF financial advisor for review.
- (b) If the department determines, based on the assessment provided by the DWGTF financial advisor, that lending money to the applicant would not pose an unreasonable risk of loss due to non-repayment of funds provided to the applicant, the department shall prepare the initial loan documents (ILD) that contain the following provisions:
- (1) The loan amount;
 - (2) The interest rate for the loan determined by the commission, provided that if the commission has established an interest rate that can vary over time, the rate shall be the rate in effect at the time the ILD is transmitted to the recipient;
 - (3) The length of the repayment term;
 - (4) A description of the project;
 - (5) Authorization for representatives of the department to examine any of the loan recipient's records that pertain to transactions relating to the loan agreement, construction contracts, or engineering contracts for the purpose of inspection, audit, and copying during normal business hours;
 - (6) For all projects that include more than just land acquisition, a requirement for the recipient to develop and adhere to an asset maintenance and renewal plan for the funded improvements;
 - (7) Security for the loan; and
 - (8) Any other provision(s) required by state or federal law in order for the agreement to be valid.
- (c) The department shall send the drafted ILD to the DWGTF attorney and to the applicant for review and comment.

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(d) If the applicant agrees to the terms of the ILD as approved by the DWGTF attorney, the department shall submit the unsigned ILD to the governor and executive council for approval.

(e) If the governor and executive council approve the ILD, the department and the recipient shall schedule a loan closing for a mutually-acceptable date and time.

(f) The recipient shall bring any additional documents identified by the DWGTF attorney and listed in the loan closing agenda to the closing.

(g) After the recipient signs the ILD, the department shall:

(1) Sign the ILD; and

(2) Provide a copy of the signed ILD to the recipient and the DWGTF attorney.

(h) The ILD shall be effective upon signing by the recipient and the department.

Source. #12903, eff 10-23-19

Env-Dw 1304.04 Grant Agreement (GA) Documents.

(a) Following acceptance of an application for a grant, the department shall prepare a grant agreement (GA) that contains the following provisions:

(1) The grant amount;

(2) Project scope and budget;

(3) Grant payment terms;

(4) Authorization for representatives of the department to examine any of the loan recipient's records that pertain to transactions relating to the grant agreement, construction contracts, engineering contracts, or other consulting contracts for the purpose of inspection, audit, and copying during normal business hours;

(5) For all projects that include more than just land acquisition, a requirement for the recipient to develop and adhere to an asset maintenance and renewal plan for the funded improvements; and

(6) Any other provision(s) required by state or federal law in order for the agreement to be valid.

(b) The department shall transmit the GA to the recipient for review. If the recipient agrees with the terms, the recipient shall sign and date the GA and return the signed GA to the department.

(c) Upon receipt of a signed GA, the department shall sign the GA and submit the GA to the governor and executive council for approval.

(d) If approved by the governor and executive council, then:

(1) The GA shall be effective upon approval; and

(2) The department shall send a copy of the approved GA to the recipient.

Source. #12903, eff 10-23-19

Env-Dw 1304.05 Accrual of Interest Charges.

(a) Interest on any loan funds disbursed to the recipient shall begin to accrue on the date of each disbursement of such funds by the state.

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(b) The interest rate charged on the outstanding balance of disbursed funds prior to the scheduled completion date or substantial completion date shall be equal to 1.0 % annually.

(c) The interest rate charged on the outstanding balance of disbursed funds during repayment of the loan after the date of scheduled completion or substantial completion, whichever is earlier, shall be based on the repayment period selected by the applicant and the interest rate established in the loan agreement.

(d) The recipient shall pay interest charges incurred on disbursed funds by choosing to pay:

(1) Prior to the commencement of the loan repayment; or

(2) At the time of the first repayment, unless the charges are added to the outstanding principal balance at the recipient's request; or

(3) A combination of (1) and (2), above.

(e) The interest rate during loan repayment shall be fixed over the loan repayment period.

Source. #12903, eff 10-23-19

Env-Dw 1304.06 Timely Use of Funds.

(a) A recipient shall begin to expend funds within 6 months of the effective date of a grant agreement or the effective date of the original loan agreement or initial loan documents, as applicable, unless otherwise specified in the GA, OLA, or ILD, as applicable.

(b) If a recipient fails to comply with (a), above, the department shall request the recipient to show cause why the loan or grant should not be cancelled.

(c) The department's request shall:

(1) Be in writing; and

(2) Specify a date by which the recipient must respond in writing to the request.

(d) If the recipient shows that the delay in expending the funds was based on an excusable delay, the department shall:

(1) Not cancel the grant or loan, as applicable; and

(2) Notify the commission of such determination.

Source. #12903, eff 10-23-19

Env-Dw 1304.07 Disbursement Requests.

(a) To request a disbursement for eligible costs from the awarded funds, the recipient shall submit a written disbursement request to the department by mail or e-mail.

(b) The written request shall include the following, as applicable to the request:

(1) A written request for disbursement that includes the information specified in (c), below, and is signed as specified in (d), below; and

(2) As applicable:

a. Invoices for equipment and materials delivered and properly stored;

b. Invoices for engineering or consulting services;

c. Payment requisitions from the contractor(s); and

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- d. Invoices for eligible work not covered under a. through c., above.
- (c) The request for disbursement shall include the following:
- (1) The name and mailing address of the recipient;
 - (2) The total amount of the original loan or grant;
 - (3) The DWGTF project number and disbursement request number;
 - (4) Whether the request is for a partial payment or for final payment;
 - (5) The start and end dates of the period covered by the request;
 - (6) For each of the following classifications, the amount for the total project, the amount determined to be DWGTF eligible, the amount included in previous requests, and the amount of the current request, as applicable:
 - a. Administrative costs;
 - b. Pre-construction costs;
 - c. Land acquisition;
 - d. Construction;
 - e. Construction administration;
 - f. Equipment;
 - g. Miscellaneous costs; and
 - h. Other, with a brief description;
 - (7) The total for each category of costs identified in (6), above;
 - (8) The percent of the loan or grant previously disbursed;
 - (9) The total percent of loan or grant disbursed including the current request; and
 - (10) The name and title of the authorized representative who is signing the request.
- (d) The authorized representative shall sign and date the request.
- (e) The signature provided pursuant to (d), above, shall constitute certification that:
- (1) The project costs stated on the request are eligible project costs;
 - (2) The amount requested is not covered by any previous request; and
 - (3) The recipient has inspected all work covered by the request and all such work has been performed in accordance with all applicable requirements and to the recipient's satisfaction.

Source. #12903, eff 10-23-19

Env-Dw 1304.08 Disbursements.

- (a) The department shall approve a request submitted as specified in Env-Dw 1304.07 if it determines that:
- (1) The costs covered by the request are eligible costs covered by the recipient's financial assistance agreement; and
 - (2) The costs have not been covered by any previous disbursement.

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(b) Upon approval of the request, the department shall authorize the disbursement to be made from the DWGTF, subject to Env-Dw 1304.09.

(c) The recipient shall not make disbursement requests more frequently than once per calendar month per loan or grant.

Source. #12903, eff 10-23-19

Env-Dw 1304.09 Assurances for Infrastructure Projects. The department shall not disburse any DWGTF funds for construction until the recipient provides the following:

(a) A copy of the approval letter for project plans and specifications that incorporate best available technology for treating the water to meet drinking water quality standards;

(b) A written agreement to maintain project financial accounts in accordance with Env-Dw 1304.15 and to maintain project accounts as separate accounts; and

(c) A written agreement to provide notice of initiation of operation to the department upon beginning operation of the project.

Source. #12903, eff 10-23-19

Env-Dw 1304.10 Supplemental Loan Agreement for Loans to Governmental Recipients.

(a) Upon completion of a project by a governmental recipient, the department shall:

(1) Prepare a supplemental loan agreement (SLA) to reflect actual project expenditures and to establish:

a. The loan term selected by the recipient and the corresponding interest rate as stated in the OLA or ILD; and

b. The loan repayment schedule based on the final project cost; and

(2) Transmit the SLA to the recipient for review and signature.

(b) Upon receipt of a signed SLA, the department shall sign the SLA and send a copy thereof to the recipient.

Source. #12903, eff 10-23-19

Env-Dw 1304.11 Allonge for Loans to Non-Governmental Recipients.

(a) Upon completion of a project by a non-governmental recipient, the department shall:

(1) Prepare an allonge to reflect actual project expenditures and to establish:

a. The loan term selected by the recipient and the corresponding interest rate as stated in the OLA or ILD; and

b. The loan repayment schedule based on the final project cost; and

(2) Transmit the allonge to:

a. The DWGTF attorney for review; and

b. The recipient for review and signing.

(b) Upon receipt of a signed allonge, the department shall sign the allonge and send a copy thereof to the recipient.

Source. #12903, eff 10-23-19

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Env-Dw 1304.12 Loan Repayment.

(a) The recipient shall repay all funds received and interest accrued thereon to the department as stipulated in the SLA or allonge, as applicable.

(b) The department shall deposit all funds that are repaid under this chapter to be credited directly to the DWGTF.

(c) Loan repayment shall:

(1) Not exceed the loan term established in the SLA or allonge; and

(2) For governmental entities, begin by:

a. For infrastructure projects, the earlier of one year following substantial completion of the project or one year following the scheduled completion date as stated in the OLA or ILD, as applicable; or

b. For source water protection projects, one year following project completion.

(3) For non-governmental entities:

a. Commence interest-only payments by 6 months following:

1. For infrastructure projects, the earlier of substantial completion of the project or the scheduled completion date as stated in the OLA or ILD, as applicable; or

2. For SWP projects, 6 months following project completion; and

b. Commence principal and interest repayments by one year following:

1. For infrastructure projects, the earlier of substantial completion of the project or the scheduled completion date as stated in the OLA or ILD, as applicable; or

2. For SWP projects, 6 months following project completion

(d) The loan shall be amortized on an annual basis for governmental entities and on a monthly basis for non-governmental entities.

(e) Any recipient may repay a loan, in whole or in part, prior to the date stipulated in the loan agreement with no prepayment penalty.

Source. #12903, eff 10-23-19

Env-Dw 1304.13 Modifications. For projects funded in whole or in part with funds from the DWGTF, if excusable delay results in the project not being completed by the scheduled completion date, the department shall:

(a) Offer to modify the OLA, ILD, or GA, as applicable, to account for the delays; and

(b) If the recipient so requests, negotiate an appropriate modification of the financial assistance agreement.

Source. #12903, eff 10-23-19

Env-Dw 1304.14 Use of Funds; Return of Funds.

(a) The recipient shall use and expend financial assistance provided from the DWGTF solely and exclusively for the payment of authorized eligible costs of the project for which the financial assistance was approved.

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(b) If the recipient uses any funds provided from the DWGTF for anything other than eligible costs on the specific project for which such funds were furnished, the recipient shall return or otherwise repay to the department all such funds.

Source. #12903, eff 10-23-19

Env-Dw 1304.15 Retainage. If the recipient intends to withhold a retainage, the recipient shall specify the terms and conditions relating to the retainage in the contract documents submitted pursuant to Env-Dw 1306.04.

Source. #12903, eff 10-23-19

Env-Dw 1304.16 Accounting. Each recipient shall:

- (a) Use generally accepted accounting principles;
- (b) Place all funds received from the DWGTF in a project account for the sole purpose of planning, designing, and constructing or implementing the project as approved by the commission;
- (c) Use all funds received from the DWGTF for the sole purpose of planning, designing, and constructing or implementing the project as approved by the commission;
- (d) Provide an audit conducted by an accountant licensed under RSA 309-B who meets the qualifications for a forensic accountant established by the Governmental Accounting Standards Board (GASB) for a governmental entity or by the Financial Accounting Standards Board (FASB) for non-governmental entities in response to a department or commission request for an audit based on a reasonable suspicion of fraud or misuse of DWGTF funds;
- (e) Maintain insurance coverage on the project in an amount adequate to protect the state's investment, as determined based on the nature of the project and the amount of funding provided from the DWGTF in consultation with the department;
- (f) Comply with any special conditions specified by the department's environmental determination until all financial obligations to the state have been discharged; and
- (g) Continually abide by the terms of the financial assistance agreement, all applicable rules, and relevant state statutes for operation and maintenance of the facility.

Source. #12903, eff 10-23-19

PART Env-Dw 1305 ENVIRONMENTAL REVIEW

Env-Dw 1305.01 Environmental Review Required. Any construction project for which financial assistance from the DWGTF is requested shall be reviewed by the department for impacts on the human and natural environment in accordance with this part.

Source. #12903, eff 10-23-19

Env-Dw 1305.02 General Procedure. The department shall perform an environmental review and prepare an environmental review report based on the applicant's proposed project as specified in Env-Dw 1108.

Source. #12903, eff 10-23-19

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PART Env-Dw 1306 INFRASTRUCTURE PROJECTS: DESIGN, CONSTRUCTION, AND IMPLEMENTATION PHASES

Env-Dw 1306.01 Applicability. This part shall apply to infrastructure projects only.

Source. #12903, eff 10-23-19

Env-Dw 1306.02 Consulting Contracts for Expenditures of DWGTF Funds.

(a) For all projects funded from the DWGTF that require consulting services, the contract for such services shall contain the following:

- (1) A description of the services to be provided by the consultant, including the due date for any report or plans that will be prepared;
- (2) The recipient's responsibilities under the contract;
- (3) The estimated time of completion of the services covered by the contract;
- (4) Compensation to be paid to the consultant; and
- (5) Termination provisions.

(b) The recipient shall comply with all applicable procedures and incidental legal requirements in awarding the consultant's contract.

Source. #12903, eff 10-23-19

Env-Dw 1306.03 Engineering Plans and Specifications.

(a) The applicant shall prepare and submit engineering plans and specifications that conform to the applicable design standards specified in Env-Dw 400, if applicable.

(b) Department approval of the plans and specifications shall not relieve the applicant of any liabilities or responsibilities with respect to the design, construction, operation, or performance of the project.

Source. #12903, eff 10-23-19

Env-Dw 1306.04 Construction Contract Documents.

(a) The recipient shall submit construction contract documents to the department for review and approval.

(b) No construction project shall be offered for public bid until after the department has reviewed and approved the contract documents as specified in Env-Dw 1306.05.

(c) The construction contract documents submitted by the recipient to the department shall contain the following:

- (1) Bidding requirements for the construction of the project, including bid advertisement or solicitation for competitive quotations, information for bidders, a bid proposal form that separates eligible construction from ineligible construction, and applicable bid security requirements;
- (2) Agreement and applicable requirements for the payment bond, performance bond, notice to proceed, and related documents such as the contractor's affidavit, the contractor's release, the certificate of substantial completion, and the format for change orders;
- (3) For loans and grants greater than \$100,000, general and supplemental conditions for the construction of the project, including provisions requiring the contractor to obtain and maintain the appropriate insurance coverage;

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- (4) Plans and specifications as specified in Env-Dw 1306.03;
- (5) Appendices including boring logs, permits and other details as appropriate;
- (6) Provisions giving authorized representatives of the department access to all construction activities, books, records, and documents for the purpose of inspection, audit, and copying during normal business hours; and
- (7) Such conditions, specifications, and other provisions as are required to comply with state and local law.

Env-Dw 1306.05 Department Review of Contract Documents.

- (a) The department shall review the contract documents submitted pursuant to Env-Dw 1306.03 within 30 calendar days of receipt.
- (b) The department shall approve the contract documents if they:
 - (1) Meet the requirements listed in Env-Dw 1306.04(c);
 - (2) Are consistent with all applicable state requirements; and
 - (3) Are consistent with the planning document submitted pursuant to Env-Dw 1303.02(d)(2).
- (c) After the contract documents are approved, no changes to the contract documents shall be made unless the recipient obtains prior approval from the department pursuant to Env-Dw 1306.06.
- (d) After the contract documents are approved, no increases in project cost or scope shall be made unless the recipient obtains prior approval from the department pursuant to Env-Dw 1306.06.
- (e) Department approval of the contract documents shall not relieve the applicant of any liabilities or responsibilities with respect to the design, construction, operation, or performance of the project.

Source. #12903, eff 10-23-19

Env-Dw 1306.06 Bidding Requirements. Recipients shall comply with the following bidding requirements:

- (a) The bid period shall be not less than 14 calendar days, unless the department has approved a shorter bid period due to an imminent threat to public health or safety;
- (b) The advertisement for bids or competitive quotes shall include the following:
 - (1) The project name and contract number;
 - (2) The location of work;
 - (3) A description of work to be performed;
 - (4) The time and date at which the bids will be publicly opened and read aloud, and a statement that bids received after that time will not be accepted;
 - (5) An address and cost information for obtaining plans and specifications; and
 - (6) The addresses where plans and specifications can be examined;
- (c) The recipient shall reserve the right to:
 - (1) Reject any or all bids; and
 - (2) Waive any informalities or minor defects on bids received; and

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- (f) If any addenda to the bid are needed, the recipient shall:
 - (1) Submit the proposed addenda to the department for review as much in advance of issuing it as possible;
 - (2) Consult with the department about any comments or needed adjustments and refrain from issuing the addenda without approval from the department, which shall be granted if the addenda meet the criteria established in Env-Dw 1306.05(b); and
 - (3) Issue the approved addenda no less than 5 days prior to bid opening.

Source. #12903, eff 10-23-19

Env-Dw 1306.07 Changes to Contract Documents and Project Cost or Scope.

- (a) After the contract documents have been approved by the department, the recipient shall not make, allow, or authorize any changes, modifications, or amendments to or departure from the approved plans and specifications without the prior written approval of the department.
- (b) A request to modify contract documents as described in (a), above, shall:
 - (1) Identify each change for which approval is sought;
 - (2) Explain the reason(s) for each change requested, including an explanation of the operational or economic consequences of the requested change(s) not being approved; and
 - (3) Explain how the request meets the criteria specified in (d) or (e), below, as applicable.
- (c) The department shall approve or deny the request within 10 working days of receipt of a request that meets the criteria of (b), above.
- (d) The department shall approve one or more changes in the contract documents if the recipient's request demonstrates that the change(s) are:
 - (1) Eligible costs that can be covered by the existing financing arrangement, if there are any costs associated with the change(s);
 - (2) Consistent with the goal(s) of the project; and
 - (3) Protective of the health of the public served by the recipient's water system.
- (e) The department shall approve a request for an increase in project cost or scope if the following criteria are met:
 - (1) The increased cost or scope was not reasonably foreseeable at the time the original project proposal was submitted;
 - (2) The scope of the project as modified is consistent with the original intent of the financial assistance;
 - (3) The cost increase results in a total cost no greater than the prevailing rate for the item to which the cost is attributable such as, but not limited to, labor and materials;
 - (4) The item to which the cost increase is attributable is an eligible cost; and
 - (5) If the recipient has sufficient monies available at the time the request is filed to cover the proposed cost increase.

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(f) The amount of funding provided from the DWGTF shall be increased only by approval from the commission and a formal amendment in writing from the department, with governor and council approval.

Source. #12903, eff 10-23-19

Env-Dw 1306.08 Awarding Construction Contracts.

(a) The recipient of financial assistance from the DWGTF for a construction project shall comply with all applicable legal procedures and other legal requirements in advertising for bids and awarding the construction contract.

(b) The text of the construction contract documents shall not vary from the text of the contract documents approved pursuant to Env-Dw 1306.05, unless a change has been approved pursuant to Env-Dw 1306.06.

(c) After receiving and reviewing bids, the recipient shall select the lowest responsive bid or competitive quotation, unless approval is requested and obtained from the department to award the contract to a higher bid or quotation based on the lowest bid or quotation not being from a responsible bidder.

(d) The recipient shall request approval from the department to award the construction contract by submitting the following in writing to the department:

- (1) A revised estimate of eligible project costs;
- (2) For loans and grants greater than \$100,000, monthly cash flow projections;
- (3) Evidence of solicitation for bids or competitive quotations;
- (4) A tabulation of all bids that were received;
- (5) A letter signed by the recipient's authorized representative indicating the contract value and the name of the bidder to whom the contract is planned to be awarded;
- (6) A copy of the bid proposal of the bidder to whom the contract is planned to be awarded;
- (7) If the bidder selected is not the lowest bidder, an explanation of why the lowest bidder was not selected; and
- (8) Certification that all necessary permits, land acquisitions, and easements have been secured.

(e) The department shall approve the award of the construction contract if it determines that all applicable requirements have been met. The applicant shall not award the construction contract until after it has received written approval to do so from the department.

(f) For all construction projects funded by the DWGTF program, following receipt of approval from the department the recipient shall sign a construction contract with the selected contractor.

Source. #12903, eff 10-23-19

Env-Dw 1306.09 Recipient's Obligations for Inspections During Construction.

(a) During the construction phase of the project, the recipient shall obtain the engineering or other inspection services necessary to assure completion of the project in accordance with the financial assistance agreement and the approved plans and specifications.

(b) After the construction contract is awarded, the recipient shall provide for on-site inspections of the project by a resident project representative that are sufficient to provide assurance to the recipient and the

department that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, approved alterations, and sound engineering principles and building practices.

Source. #12903, eff 10-23-19

Env-Dw 1306.10 Department Inspections During Construction.

- (a) The recipient shall allow the department to inspect the project at any time in order to confirm that:
 - (1) The materials furnished meet the approved specifications; and
 - (2) The project is being built in accordance with the approved plans and specifications and any approved alterations.
- (b) In conjunction with project inspections, the department shall:
 - (1) Inspect the materials that are visible at the time of the inspection to determine compliance with the approved plans and specifications; and
 - (2) Document the manner and progress of the project, conditions relating to the materials furnished, and on the contractor's compliance with the approved plans and specifications for the project.
- (c) Inspections by the department shall not release the contractor from any obligation to perform the work in accordance with the requirements of the contract documents, nor shall such inspections release the project engineer from determining compliance with the requirements of the contract documents.
- (d) The contractor and recipient shall provide the department with such accommodations as needed for the department to determine whether the work as performed is in accordance with the requirements and intent of the contract.
- (e) The department shall, as soon as practicable, bring to the attention of the recipient and the resident project representative any discrepancies between the approved plans and specifications and the actual work observed of which it becomes aware through its inspections.
- (f) Upon being notified of any such discrepancies, the recipient and the resident project representative shall immediately:
 - (1) Initiate necessary action to rectify the deficiencies; or
 - (2) Provide documentation to the department explaining the reason(s) for the discrepancies and demonstrating that the installation meets the applicable requirements.
- (g) If the recipient's resident project representative is not able to demonstrate that the material furnished or work performed conforms with the terms of the construction contract, the recipient shall direct the resident project representative to reject questionable materials and initiate other action provided for in the construction contract, including suspension where necessary, until all disputed issues are resolved in accordance with the terms of the construction contract.

Source. #12903, eff 10-23-19

Env-Dw 1306.11 Testing During Construction.

- (a) In addition to normal testing procedures required of the recipient, the department shall require such additional tests of building materials and processes as the department determines to be necessary to demonstrate compliance with the approved plans and specifications and any approved alterations thereto during the building of projects financed in whole or in part by DWGTF funds.

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(b) All tests, whether for the department or the project engineer, shall conform to current American Water Works Association standards as specified in Env-Dw 407, American Association of State Highway and Transportation Officials, American Society of Testing and Materials, and the New Hampshire department of transportation published procedures, or similar criteria, as applicable to the specific materials and processes proposed by the recipient to be used in the project.

(c) The department shall specify which tests are applicable based on the specific materials and processes proposed by the recipient to be used in the project. Samples for testing shall be furnished free of cost to the department upon request at the construction site.

Source. #12903, eff 10-23-19

Env-Dw 1306.12 Construction Phase Submittal. During the construction phase of the project, the recipient shall submit:

(a) A notice of completion of construction to the department, upon completion of project construction; and

(b) Any other building phase submittals required by the financial assistance documents to be submitted for the department's approval.

Source. #12903, eff 10-23-19

Env-Dw 1306.13 Final Inspection and Review of Records.

(a) Upon completion of any project for which financial assistance from the DWGTF has been provided, the applicant shall furnish to the department written notification of completion.

(b) Upon receipt of such notification, or upon project completion should notification not be furnished as required, and prior to the department approving the final disbursement, the department shall:

(1) Confirm that the project has been completed as contemplated in the financial assistance agreement, which shall include conducting a final on-site inspection of the project, if necessary, with the recipient or the recipient's designee; and

(2) Review the recipient's records relative to funds furnished to the recipient from the DWGTF.

Source. #12903, eff 10-23-19

PART Env-Dw 1307 WAIVERS

Env-Dw 1307.01 Purpose. The purpose of the rules in this part is to accommodate situations in which strict compliance with all requirements established by this chapter may not be in the best interests of the public or the DWGTF.

Source. #12903, eff 10-23-19

Env-Dw 1307.02 Procedures.

(a) Any applicant or recipient who is or would be directly and adversely affected by the strict application of a rule in Env-Dw 1300 may request a waiver thereof from the department.

(b) Each request for a waiver shall be filed in writing by the authorized representative of the applicant or recipient, as applicable.

(c) Each request for a waiver shall include the information specified in Env-Dw 1307.03 and be signed as required by Env-Dw 1307.04.

Source. #12903, eff 10-23-19

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Dw 1307.03 Content and Format of Requests. The person requesting the waiver shall provide the following information to the department:

- (a) The name, mailing address, and daytime telephone number including area code of the requestor;
- (b) The project to which the waiver request relates; and
- (c) For each waiver sought, the following:
 - (1) The number of the specific section of the rules;
 - (2) A complete explanation of why a waiver is being requested, including an explanation of the economic and operational consequences of complying with the rule as written;
 - (3) If applicable, a full explanation of the alternate(s) proposed to be substituted for the requirement in the rule, including documentation or data, or both, to support the alternative;
 - (4) Whether the need for the waiver is time-limited and, if so, the estimated length of time the waiver will be needed; and
 - (5) A complete explanation of why the applicant believes that having the waiver granted will meet the criteria in Env-Dw 1307.05.

Source. #12903, eff 10-23-19

Env-Dw 1307.04 Signature Required.

- (a) The authorized representative of the applicant or recipient that is requesting the waiver shall sign the request.
- (b) The authorized representative's signature shall constitute certification that:
 - (1) The information provided is true, complete, and not misleading to the best of the signer's knowledge and belief;
 - (2) The signer understands that any waiver granted based on false, incomplete, or misleading information is subject to revocation; and
 - (3) The signer is subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641.
- (c) If the signer is or is acting on behalf of a listed engineer as defined in Env-C 502.10, the signature also shall constitute certification that the signer understands that the submittal of false, incomplete, or misleading information could constitute grounds for debarring the listed engineer from the roster.

Source. #12903, eff 10-23-19

Env-Dw 1307.05 Criteria.

- (a) Subject to (b), below, the department shall grant a waiver if:
 - (1) Granting the waiver, conditional upon implementation of alternatives, if applicable, will result in circumstances that are as protective of the public, the environment, and the integrity of the DWGTF program as the requirements contained in this chapter;
 - (2) Granting the waiver, conditional upon implementation of alternatives, if applicable, will not adversely impact the department's obligations under RSA 485-F; and
 - (3) Strict adherence to the rule would not be in the best interest of the public, the environment, or the DWGTF.

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(b) No waiver shall be granted if the effect of the waiver would be to waive or modify a state or federal statutory requirement, including but not limited to any requirement of RSA 486, RSA 485, or the federal SDWA, unless:

- (1) Such statute or grant expressly provides that the requirement may be waived or modified; and
- (2) In the case of a federal statute, EPA does not object to granting the waiver.

Source. #12903, eff 10-23-19

Env-Dw 1307.06 Decisions.

(a) The department shall notify the person requesting the waiver of its decision in writing within 30 calendar days of receiving a complete request. If the request is denied, the department shall specify the reason(s) for the denial in the notice.

(b) The department shall include such conditions in a waiver as are necessary to ensure that the criteria specified in Env-Dw 1307.05 are met, including if applicable the implementation of alternatives.

(c) If the need for a waiver is temporary, the waiver shall specify the date on which it will expire.

Source. #12903, eff 10-23-19

APPENDIX A: STATE STATUTES IMPLEMENTED

Rule Section(s)	State Statute(s) Implemented
Env-Dw 1300 (see below for additional statute for specific part)	RSA 485-F
Env-Dw 1307	RSA 541-A:22, IV

APPENDIX B: STATUTORY DEFINITIONS

RSA 485:1-a

XIV-a. “Privately owned redistribution system” means a system for the provision of piped water for human consumption which does not meet the definition of public water system under paragraph XV, and meets all the following criteria: (1) obtains all of its water from, but is not owned or operated by, a public water system; (2) serves a population of at least 25 people, 10 household units, or 15 service connections, whichever is fewest, for at least 60 days per year; and (3) has exterior pumping facilities, not including facilities used to reduce pressure, or exterior storage facilities which are not part of building plumbing.

XV. “Public water system” means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Any water system which meets all of the following conditions is not a public water system:

- (a) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
- (b) Obtains all of its water from, but is not owned or operated by, a public water system; and
- (c) Does not sell water to any person.